



2005 Court Clerk Training Institute

FELONY CRIMINAL OFFICE
PROCEDURES



ADMINISTRATIVE OFFICE
OF THE COURTS

EDUCATION DIVISION/CENTER FOR
JUDICIAL EDUCATION AND RESEARCH

TABLE OF CONTENTS

SECTION I. - CRIMINAL CASE OVERVIEW

A. THE CRIMINAL CASE

Definitions; key roles in criminal matters.....	1
Key Roles for Criminal Matters.....	1
Most Common Codes Used in Criminal Matters.....	2
How Felony Cases are filed	3
Defendant is arraigned on the Complaint	3
Motions are heard; plea bargains are considered.....	3
Defendant proceeds to trial	3

B. ACCUSATORY PLEADINGS AND THEIR COMPONENTS

The Pleadings.....	4
The Components of the Charging Document (PC 950).....	4
Amended Pleadings and time frames (PC 1009)	7
Time Line - Felonies	10

C. MINUTE ORDERS

Definition, Importance and Statute Requirements.....	11
Minute order Form (CRC 201)	11

SECTION II. - CUSTODY STATUS

A. CUSTODY STATUS

Custody Options: Pre-Arraignment and Post-Arraignment.....	12
Other Custody Items	13

B. BAIL (pc 1268-1320)

Definition	13
Fixing the Amount	13
Feloniously Obtained Bail (PC 1275.1).....	13
Types of Bail.....	14
Bail Exoneration (PC 1195).....	17
Bail Forfeiture (PC 1305)	18

C. WARRANTS

Arrest Warrants.....	22
Bench Warrants.....	23
Ramey Warrants.....	23
Search Warrants.....	25
Summons.....	26
Attachment for Defaulters	27

SECTION III. - GRAND JURY

A. GRAND JURY PROCEEDINGS (PC 888-945)

Definitions.....	28
Areas of Inquiry	28
Secrecy of Proceedings	28
Finding and Endorsement as a "True Bill"	29
Presentation and Filing of Indictment (PC 940)	29
Service of Arrest Warrants on Indictment	29
Grand Jury Transcript	29
Time Line Indictments.....	30
Overview of Felony Criminal Case	33

SECTION IV. - ARRAIGNMENT TO PLEA

A. ARRAIGNMENT TO PRELIMINARY HEARING

Definition	34
Elements.....	34
Six Possible Pleas (PC 1016).....	34
Mutual Discovery orders (PC 1054).....	36
Setting Future Dates (CRC 4.100)	36
Information Filed	36
Defendant Fingerprint Cards (PC 992).....	36
Preliminary Hearing Transcripts.....	37
Defendant's Presence at Felony Hearings {(PC 977(b) (1)}.....	37

B. PRE-TRIAL MOTIONS AND CONFERENCES

Definition and Benefits to Parties and the Court	38
Time for Filing.....	38
Motion and Hearings.....	39
Ex-Parte Motions	39
Common Motions and Pretrial Procedures	40
Benefits of pretrial conferences; Steps; and Outcome	42

C. EVENTS FOR CHANGE OF PLEA

Court questions defendant as to:	43
Acceptance of Plea.....	44
Set Sentencing Hearing.....	44

SECTION V. -FELONY SENTENCING

A. SENTENCING MINUTE ORDERS

Should indicate	45
If sentenced to state prison.....	46

B. FELONY PRE-SENTENCING MATTERS

Time for Pronouncement of Judgment (PC 1191).....	47
Defendant's Presence (PC 1193).....	47
Motion for New Trial (PC 1181)	48
Motion for Arrest of Judgment (PC 1185).....	49
Probation Reports (PC 1203(b))	49
Minor Pre-Sentence Diagnostic Evaluation (WI 707.2)	50
Adult Pre-Sentence Diagnostic Evaluation (PC 1203.03)	52
Pre-Sentence Diagnostic Evaluation - Sex Acts with Victim Under 14	55
Pre-Sentence Diagnostic Evaluation - Probation and Sex Crimes (PC 1203.067)	58

C. SENTENCING EVENTS

Arraignment for Judgment (PC 1200)	61
Statement of Victim/Next of Kin (PC 679.02(a)(3), PC 1191.1)	61
Dismissal of Remaining Charges by the Prosecuting Attorney (PC 1192.6)	61
The prosecuting attorney may give recommendations	61
Pronouncement of Judgment.....	62
Advisement	62
Reasons for Sentence	62
Miscellaneous Matters	63

D. PROBATION

Definition	63
Types of Probation	63
Imposition of Sentence Suspended ("ISS")	63
Execution of Sentence Suspended ("ESS")	63
Terms and Conditions	64
Probation Violations (PC 1203.2)	64
When a probationer is arraigned on a new charge	64
Probation hearing (Evidentiary Hearings)	65
Sentencing After Revocation	65
Probation Modification	65
Other Probation Related Hearings	66
Probation Transfers	66
Probation Violation Overview	67

E. FINES/PENALTY ASSESSMENTS (PC 1205)

Imposition of Fines	68
Penalty Assessments	68
Fine is to be paid	68
Failure to Pay Fine (PC 1205)	68

F. RESTITUTION FINES (PC 1202.4)

Definitions	69
Fines collected	69
Amount of fine	69
Penalty assessments	69
Parole Fine	69

G. VICTIM RESTITUTION (PC 1202.4(F))

Definitions	69
Losses may not be known	70
Penalty assessments	70
Information that should be identified	70
Collections of Restitution	70
Defendant's Financial Disclosure	71
Confidentiality of the PC 987	71
Inspection and copying of the disclosure	71

H. STATE PRISON SENTENCING

Definition	76
Time imposed.....	76
Total fixed term.....	76
Determinate Sentence	76
Indeterminate Sentence	76
Counts	77
Enhancements (Allegations)	77
Priors	77
Multiple Counts (PC 1170.1).....	77
Concurrent Term.....	78
Consecutive Term	78
Multiple Cases	78
Stayed/Stricken	78
Other Prison Commitments.....	78
Documents needed for "Prison Packet" (PC 1203.01).....	80

SECTION VI. - SPECIALTY COURTS

A. DEFERRED ENTRY OF JUDGMENT (PC 1000 ET. SEQ.)

Eligibility	87
Qualifying Criteria.....	87
Plea to Charges	88
Monitoring the Defendant.....	88
Failure to Successfully Complete the Program (PC 1000.3)	88
Successful Completion of Programs (PC 1000.4)	89
PC 1000 Deferred Entry of Judgment (Drug Diversion) Overview	90

B. DRUG COURT

Focus of Drug Court	91
The Drug Court Team.....	91
General Procedures	91
Drug program Treatment	92
Defendant Progress Review	93
Compliance with the Drug Treatment Program.....	93
Graduation and Termination from Drug program	93
Ten Key Components of a Drug Court.....	94

C. PENAL CODE SECTION 1210.1 - PROPOSITION 36

Background	95
Introduction	95
Eligibility Requirements	95
Excluding Factors - Penal Code Section 1210.1 (b)(1)	97
Refusal of Treatment.....	98
Referral for Services	98
Violation of Probation.....	98
Termination of Treatment Program - Probation Revoked	99
Completion of Treatment.....	99

D. CRIMINAL DOMESTIC VIOLENCE/PROTECTIVE ORDERS

Definition	100
Qualifying Criteria for a Protective Order	100
Marking the Court File.....	101
The Protective Order.....	101
Modification of the Protective Order	104
Termination of Protective Order	104

SECTION VII. - POST CONVICTION HEARINGS AND ORDERS

A. DISPOSITION OF ARREST AND COURT ACTION (JUS-8715)

Background	106
Confidentiality of Criminal History Record	106
Charges Reported.....	106
Information Reported.....	106
Reporting Court Dispositions	107
Reporting Methods.....	107
Stages of Form Completion	107
Distribution of Form	107
Subsequent Actions.....	108
Resource Information.....	108

B. NOTIFICATION TO ELECTION DIVISION OF CONVICTION OF FELONY

Persons generally entitled to vote (Elections Code 2101)	111
Persons not entitled to vote	111
Notification	111
The court shall furnish to the chief elections official	111

C. POWER OF ATTORNEY FOR FIREARMS TRANSFER AND DISPOSAL	112
D. DEPARTMENT OF MOTOR VEHICLES (DMV)	
Background.....	115
E. REPORTING REQUIREMENTS	
Medical Board.....	118
Board of Accountancy (BP 5063.1).....	122
State Bar (BP 6101)	124
F. CHILD VICTIM VISITATION RESTRICTIONS (PC 1202.05)	125
G. REPORTING TEST RESULTS	
Required to submit.....	127
Results forwarded to the DOJ	127
Confidentiality	127
H. ORDERS FOR DNA TESTING	129
I. RETURN AFTER APPEAL	
Definitions.....	130
Filing.....	130
Remittitur will have one of three rulings (PC 1260).....	130
Clerk gives notice to appropriate parties	131
At the hearing.....	131
J. PETITION TO REDUCE FELONY TO MISDEMEANOR.....	132
K. MOTIONS TO DISMISS PURSUANT TO PC 1203.4.....	132
L. SEALING AND DESTRUCTION OF RECORDS (PC 851.8 ET. SEQ.)	133

M. CERTIFICATE OF REHABILITATION AND PARDON

Who May File a Petition (PC 4852.01)	136
Exceptions (PC 4852.01(d))	136
Period of Rehabilitation	136
Conduct (PC 4852.05)	137
Filing the petition (PC 4852.06)	137
Evidence (PC 4852.1)	137
Investigation and Report by District Attorney (PC 4852.12)	137
Certificate of Rehabilitation (PC 4852.13)	138
Petition to rescind certificate	138
Distribution of Certificate (PC 4852.14)	138
Reporting the Certificate of Rehabilitation or the Pardon	139
Effects of a Pardon (PC 4852.17)	139
The issuance of a pardon shall not	139

N. WRITS OF HABEAS CORPUS

General Definitions	141
Statutes Governing Criminal Habeas Corpus	141
Reasons for Filing (PC 1473)	141
Requirements for Filing Petition (PC 1474)	143
Reviewing the Petition	143
Ruling on the Petition	144

SECTION VIII. - MENTAL HEALTH PROCEEDINGS

A. MENTAL INCOMPETENCE (PC 1367, 1368)

Who May make the motion	147
When motion may be Made	147
Medical Evaluation of Defendant	147
Defendant is Found Competent	147
Defendant is Found Incompetent	148
Notification Packet for the Department of Mental Health	148
Defense Request for jury Trial	148
Mental Incompetence on Sex Crimes (PC 1370 (a)(1)(B)(ii))	149
Mental Incompetence on Sex Crimes/No Bail (PC 1370(a)(1)(B)(iii))	149
Placement (PC 1370(a)(2))	149
Commitment Order	150
Progress Reports (PC 1370(b)(91))	154
Certificate of Competence (PC 1372(a)(1))	155
Maximum Term of Commitment	155
Mental Incompetency Flowchart	156

B. DEVELOPMENTALLY DISABLED DEFENDANTS (PC 1369)

Who May make the Motion	157
Medical Evaluation of the Defendant	158
Defendant is Found Competent	158
Defendant is Found Incompetent	158
Placement (PC 1370.1(a)(1)(B)(I))	158
Commitment Order	159
Progress reports (PC 1370.1(b)(1))	159
Certificate of Competence (PC 1372(a)(1))	160
Maximum Term of Commitment (PC 1370.1©(1)(A))	161
Developmentally Disabled Flowchart	163

C. NOT GUILTY BY REASON OF INSANITY (PC 1026)

Entering the Plea	164
Evaluation of Defendant (PC 1027)	164
Trial	164
Finding on the Defendant's Sanity by Jury or Court	164
Placement Recommendation	165
The Commitment	165
Progress Reports (PC 1026(f))	166
Restoration of Sanity (PC 1026.2)	166
Petition for Commitment Extension (PC 1026.5)	167
Trial Phases-Not Guilty by Insanity Cases Flowchart	170
Not Guilty By Insanity Cases Overview	171

D. OTHER MENTAL HEALTH MATTERS

LPS Conservatorship Referral (WI 5008(H)(1)(B)-5350-WI 6500)	172
Narcotic Addition and The California Rehabilitation Center (W&I 3051)	173

E. MENTALLY DISORDERED PRISONERS (PC 2972)

Definition	175
Request for Extension of Treatment	175
Hearing re Extension	175
Finding/Re-Commitment	175
Term of Commitment	176

F. SEXUALLY VIOLENT PREDATORS (WI 6600 – 6609.3)

Qualifying Criteria.....	179
Preliminary Evaluation – Before Filing with the Court.....	180
Processing the petition for Commitment	181
Urgency Review (WI 6601.5).....	182
Trial.....	182
Time of Commitment.....	183
Post Commitment Matters (WI 6605).....	183
DMH Recommends Conditional Release (WI 6607)	184
Inmate’s Petition for Conditional Release (WI 6608)	184
Conditional Release Hearing (WI 6608).....	185
Notice to Law Enforcement Officials (WI 6609.1)	186
Sexually Violent Predators Overview.....	187

SECTION IX. – OFFICE PRACTICES

A. CERTIFICATE OF IDENTITY THEFT (PC 530.6)	188
B. COMPUTING TIME FOR COURT DAYS	191
C. CONFIDENTIAL DOCUMENTS GUIDELINES	192
D. COURTROOM CLERK RESPONSIBILITIES	193
E. FACSIMILE FILING AND ELECTRONIC FILING	194
F. THE FACSIMILE STAMP	194
G. FEES.....	195
H. FILE STAMPING.....	195
I. PAPER FORMAT	196
J. RECORDS RETENTION	198
K. REGISTERED – CERTIFIED MAIL	201
L. RECORDS DESTROYED IN FIRE OR CALAMITY.....	201
M. REQUESTS FOR MEDIA COVERAGE.....	201
N. THE SEAL.....	207
O. SUBPOENA DUCES TECUM	208

I. CRIMINAL CASE OVERVIEW

A. THE CRIMINAL CASE PROCESS

1. Definitions

- a. Crime (PC 15) - a public offense committed or omitted in violation of a law forbidding or commanding it, and to which is annexed, upon conviction, either of the following punishments:
 - 1) Death
 - 2) Imprisonment in state prison
 - 3) Fine
 - 4) Removal from office, or,
 - 5) Disqualification to hold and enjoy any office of honor, trust or profit in this state.
- b. Felony (PC 17(a)) - a crime which is punishable with death or by imprisonment in the state prison.
- c. Misdemeanor (PC 17(a)) - every other crime or public offense is a misdemeanor except those offenses that are classified as infractions. Misdemeanors are punishable (PC 19) by:
 - 1) Imprisonment in county jail not to exceed 1 year (or otherwise prescribed by law)
 - 2) Fine not to exceed \$1,000.00, or
 - 3) Both.

2. Key Roles in Criminal Matters

a. Judicial Officers

- 1) Judge
- 2) Commissioner
- 3) Temporary Judges (Pro Tems)

b. Prosecutors

- 1) District Attorney
- 2) State Attorney General

c. Defense Attorneys

- 1) Court Appointed
 - a) Public Defender
 - b) Alternate Public Defender
 - c) Bar Panel Attorneys
- 2) Self Represented
- 3) Private

d. Court Reporters

e. Recording Devices

f. Bailiffs

g. Court Interpreters

3. Code Sections

- a. California Law consists of 29 codes that cover the following subject areas:

Business and Professions Code	Fish and Game Code	Public Contract Code
Civil Code	Food and Agricultural Code	Public Resources Code
Code of Civil Procedure	Government Code	Public Utilities Code
Commercial Code	Harbors and Navigation Code	Revenue and Taxation Code
Corporations Code	Health and Safety Code	Streets and Highways Code
Education Code	Insurance Code	Unemployment Insurance Code
Elections Code	Labor Code	Vehicle Code
Evidence Code	Military and Veterans Code	Water Code
Family Code	Penal Code	Welfare and Institutions Code
Financial Code	Probate Code	

4. How Felony Cases are Filed

- a. Crime is committed.
- b. Felony complaint filed with the court/arrest warrant issued.
- c. Defendant is arrested and transported in custody to court within 2 days, or defendant is arrested and released on his/her own recognizance; posts bail or signs a citation agreeing to appear in court.
- d. Felony complaint filed with the court.

5. Defendant is arraigned on the Complaint.

- a. Preliminary Hearing is held (Held to Answer) – Information filed
 - i. Defendant may plead guilty (PC 859a)

6. Motions are heard, plea bargains are considered.

- a. Defendant may plead guilty and follow with sentencing.
- b. Defendant may opt for jury or court trial.

7. Defendant proceeds to trial.

- a. Defendant found not guilty (acquitted)
- b. Defendant convicted and sentenced.

B. ACCUSATORY PLEADINGS AND THEIR COMPONENTS

1. The Pleadings

- a. Complaint - a document submitted by the prosecutor and filed in a limited jurisdiction court that lists and describes the alleged offenses committed by the defendant. (PC 740)
 - 1) Infractions - PC 853.5
 - 1) Misdemeanors - PC 853.6
 - 2) Felonies - PC 806
- b. Information - a document submitted by the prosecutor and filed in a general (unlimited) jurisdiction court, which lists and describes the alleged offenses committed by the defendant (PC 949; PC 739).
- c. Indictment - an accusation by a grand jury charging a person with a crime. (PC 889).
- d. Charge - a formal statement of the accusations against a defendant (may be any of the above).
 - 1) “Wobbler” - An offense that can be charged as a felony or misdemeanor; final plea or imposition of sentence will determine level of offense.

2. The Components of the Charging Document (PC 950)

- a. The title of the action, specifying the name of the court to which the same is presented, and the names of the parties.
- b. A statement of the public offense or offenses charged therein.
 - 1) Count - each individual accusation of a violation of a code section that is set forth in the accusatory pleading.
 - 2) Enhancement - allegation added to a count, which, if proven true, increases the basic sentence for that count.
 - a) Enhancement may define a crime as a serious or violent felony (PC 1192.7(c) series).
 - b) Special circumstances, if proved true, would warrant the death penalty or life imprisonment without the possibility of parole. (PC 190.2 series)

- 3) Felony Prior – allegation added to a case based on previous felony convictions, which, if proven, either increases the basic sentence or affects eligibility for probation. These types of priors include but are not limited to the following:

No probation prior – an allegation the defendant has been previously convicted of a felony and therefore cannot be granted probation if convicted on this felony or there are limitations on the court’s power to grant probation. (PC 1203(e)(4); PC 1203.08; PC 1203(k); PC 1203.07(a)(11))

Prison prior – each previous felony conviction that resulted in a prior prison sentence except where the defendant has remained free of both prison custody and the commission of an offense that results in a felony conviction for a period of five years. This allegation carries an additional term of 1 year. (PC 667.5(b))

Serious felony – any person who has been convicted of a serious felony who previously has been convicted of a serious felony shall receive an additional term of 5 years to be served consecutive and in addition to the sentence imposed by the court for the present offense. Charges that qualify as “serious felonies” are listed in PC 1192.7(c). (PC 667(a)(1))

- 4) Violent felony – any person convicted of a violent felony with a prior violent felony conviction shall receive an additional term of 3 years to be served consecutive and in addition to the sentence imposed by the court for the present offense. Charges, which qualify as “violent felonies” are listed in section PC 667.5(c). (PC 667.5(a))
- 5) Strike prior – a prior charged under PC 667(b)-(i) or PC 1170.12 alleging a serious or violent felony prior conviction which if proven will authorize higher sentencing possibilities.
- a) **1st strike** – serious or violent felony conviction that standing alone has no present significance. It will become significant if defendant suffers a second felony conviction (whether or not the present offense is a serious or violent felony conviction.)
 - b) **2nd strike** – punishment for current felony conviction is doubled (PC 667(d) & (e)(1); PC 1170.12(c)(1))

- c) **3rd strike** – punishment for current felony conviction is the maximum of the following (PC 667(e)(2); PC 1170.12(c)(2)):
- Triple the Base Term
 - Life imprisonment with minimum 25 years
 - Term determined by the court pursuant to PC 1170 for the underlying conviction, including any enhancement
- 6) Theft prior – an allegation that defendant has been previously convicted of a theft crime under PC 666 (petty theft, grand theft, auto theft, burglary, carjacking, robbery, or felony receipt of stolen property) and subsequently convicted of a petty theft will result in additional sentencing penalties, specifically, imprisonment in the county jail not exceeding one year, or in the state prison.
- 7) Auto Theft with a prior – an allegation that the defendant has been previously convicted of auto theft under VC 10851, or felony grand theft of a vehicle, motor vehicle, or construction equipment as defined in the Penal Code, or a vessel as defined in the Harbor and Navigation Code. A subsequent conviction of this theft will result in additional sentencing penalties, specifically, imprisonment in the state prison for a term of 2, 3 or 4 years, and a fine of \$10,000. (PC 666.5)
- 8) Drug prior (HS 11370.2) – an allegation that defendant has been convicted of, or for each prior felony conviction of conspiracy to violate Health and Safety Code sections 11351, 11351.5, 11352, 11378, 11378.5, 11379, 11379.6, 11380, 11380.5 or 11383. Any conviction of this section will add a full, separate, and consecutive 3 year term, whether or not the prior conviction resulted in a term of imprisonment.
- 9) VC 23152(a), (b) – Driving under the influence of alcohol or drugs.
- 10) VC 23153(a), (b) – DUI and causing bodily injury.
- 11) Subsequent convictions for PC 314.1 (lewd or obscene conduct) will result in a felony filing/conviction.

3. Amended Pleadings (PC 1009)

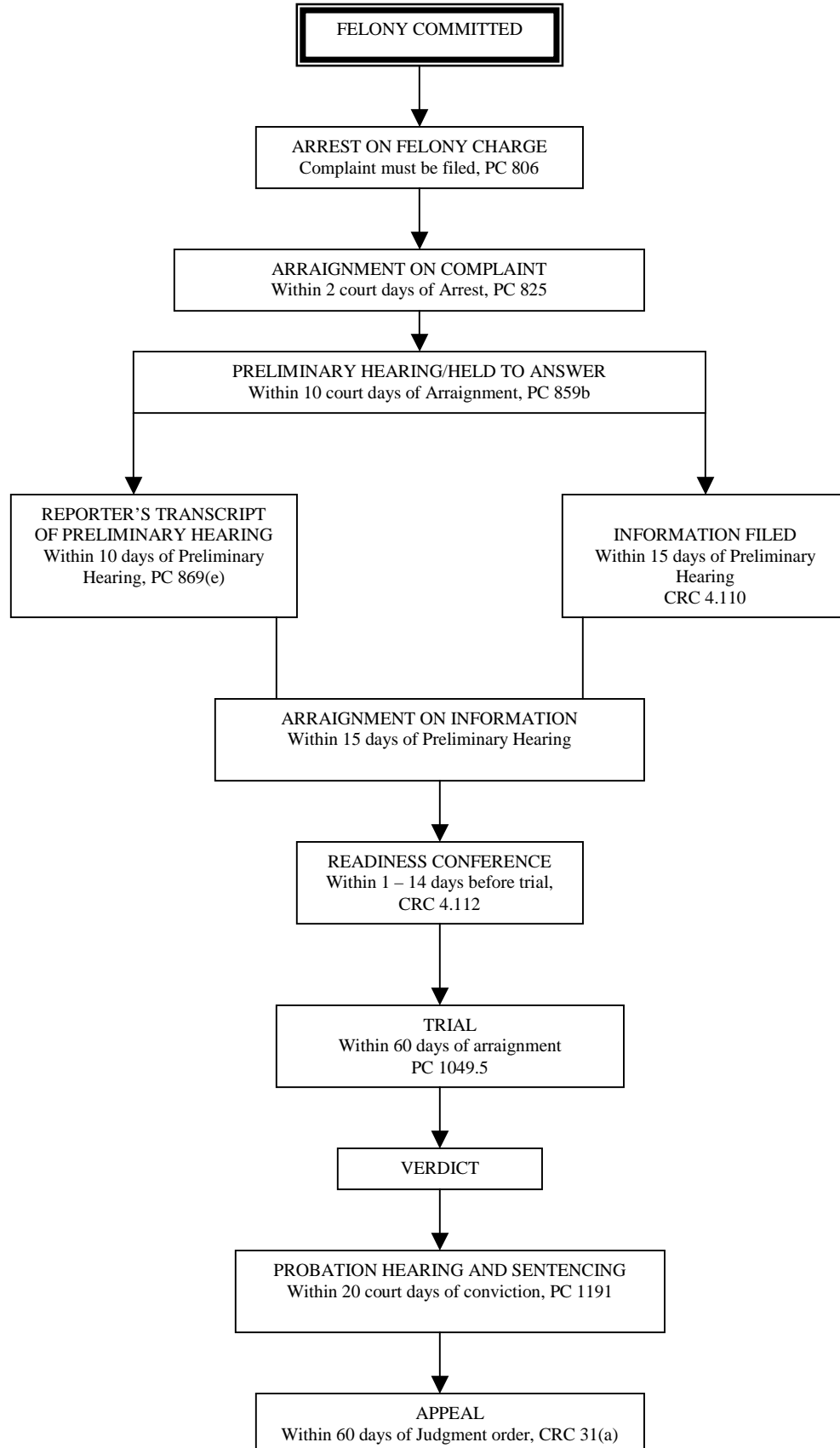
The District Attorney may file an amended accusatory pleading by:

- a) Interlineation (write in change, initial, date of amendment)
- b) Filing of amended Complaint, Information, or Indictment
- c) Filing of amendment to Information/Indictment
- d) An indictment, accusation or information may be amended by the district attorney, and an amended complaint may be filed by the prosecuting attorney, without leave of court at any time before the defendant pleads or a demurrer to the original pleading is sustained.

INSERT COPY OF COMPLAINT

INSERT COPY OF INFORMATION

TIME LINE – FELONIES



C. MINUTE ORDERS

1. Definition, Importance, and Statute Requirements

- a. Minute order - a memorandum of what takes places in court, made by authority of the court. (*Black's Law Dictionary*)
- b. The minutes or docket are a memorandum of the orders and proceedings of the court made by the courtroom clerk and maintained as a permanent record pursuant to statute. The minute order reflects the official record of the court.
- c. Minutes are to be maintained by the clerk as part of the permanent record of the court. (GC 69844)
- d. Minutes constitute the only official record of the actions of the court. (*Meskeil v. Culver City Unified School District* (1970) 12 Cal.App.3rd 815, 821)

2. Minute Order Form (CRC 201)

- a. Paper
 - 1) Recycled, white or unbleached (CRC 201(b))
 - 2) 8 ½ x 11 inches in size (CRC 201(c))
- b. Print (CRC 201(c))
 - 1) Not smaller than 12 points
 - 2) Blue-black or black color ink
 - 3) Equivalent to Courier, Times or Helvetica
- c. Pages must be (CRC 201(c))
 - 1) Punched with two holes (2 ½ inches apart) in the center of the page, 5/8 inches from the top.
 - 2) Numbered consecutively at the bottom. If minute orders are produced electronically, they may not be numbered at the bottom of the page.

II. CUSTODY STATUS

A. CUSTODY STATUS

1. Custody Options Pre-Arraignment

- a. Cite Release
- b. Bail (include amount and type)
- c. Remanded

The defendant is placed into the care and custody of the Sheriff/Marshal or designated law enforcement officer.

2. Custody Options Post-Arraignment

- a. Own Recognizance (O.R.) (PC 1318)
- b. Bail (include amount and type)
- c. Deferred Entry of Judgment
- d. Probation
- e. Remanded/Committed

The defendant is returned to the care and custody of the Sheriff/Marshal or designated law enforcement officer in the following situations:

- 1) At the end of each hearing if in custody
- 2) At any hearing if the defendant is "at liberty" and one of the following things occur:
 - a) Bail is increased
 - b) There has been a violation of one or more conditions of the O.R. release
 - c) Bail is exonerated

3. Other Custody Items

a. Release Orders

- 1) The court may order the defendant released from custody and placed on an "at liberty" status at any stage of the proceedings.
- 2) If the defendant is acquitted or the case is dismissed, the court shall order the defendant released.

B. BAIL (PC 1268-1320)

1. Definition

A security given by or for a person in custody to ensure his/her appearance in court when so ordered.

2. Fixing the Amount

- a. **PC 1269b(b) prescribes:** If a defendant has appeared before a judge of the court on the charge contained in the complaint, indictment, or information, the bail shall be in the amount fixed by the judge at the time of the appearance. If that appearance has not been made, the bail shall be in the amount fixed in the warrant of arrest or, if no warrant of arrest has been issued, the amount of bail shall be pursuant to the uniform countywide schedule of bail for the county in which the defendant is required to appear, previously fixed and approved as provided in subdivisions (c) and (d).
- b. **Bail Set Below Bail Schedule on Serious/Violent Felony**
 - 1) Court makes a finding of unusual circumstances
 - 2) Finding must be set on the record

3. Feloniously Obtained Bail (PC 1275.1)

- a. Bail thought to be feloniously obtained cannot be accepted until the court has made a finding the funds used to meet bail have not been feloniously obtained.
- b. Bail hold can be ordered based on one of the following:
 - 1) Peace officer or prosecutor submits declaration of probable cause executed under penalty of perjury.

- 2) Court has probable cause to believe funds to be used for bail were feloniously obtained.
- 3) Court finds probable cause exists:
 - a) Defendant has burden of proof to show that the funds to be used for bail have not been feloniously obtained.
 - b) Probable cause hearing may be closed to allow privacy of financial assets of the party.
- 4) If the defendant meets the burden of proof the bail hold will be released.
- 5) Probable cause declaration must be acted on within 24 hours or defendant must be released on posting the amount of bail set.
- 6) Defendant can get a loan to obtain funds for bail provided the money used to repay the loan was not feloniously obtained.
- 7) If the Defendant is found to have willfully misled the court regarding the source of the bail the court can increase bail.

4. Types of Bail

- a. Cash Bail (PC 1295) - full amount of bail set is posted
- b. Bail Bond/Undertaking (PC 1276)
 - 1) A guarantee by a corporate surety that a person will appear in court.
 - 2) A promise to pay a sum of money if the appearance is not made.
- c. Property Bond (PC 1298)
 - 1) Equity in real property, given as security to guarantee that a person will appear in court.
 - 2) The equity of property, less encumbrances, must be equal to twice the amount of bail.
- d. Appeal Bond (PC 1272)
 - 1) The court may set bail on appeal if there exists clear and convincing evidence that the defendant is not likely to flee.
 - 2) It is discretionary as to felonies requiring notice to the prosecuting attorney at least five court days before the hearing (PC 1274).

e. Government Bond

- 1) In lieu of a deposit for money, the defendant or any other person may deposit bonds of the United States Government or of the State of California in the amount of bail set. (PC 1298)

U.S. Savings bonds are not acceptable in lieu of bail.

5. **Stacked vs. Multiple Bonds**

Stacked bonds - are two or more bonds that are insured by the same corporate surety company, posted in a single case for a single defendant, and none of the bonds contains a power of attorney, which equals or exceeds the amount of bail set. Stacked bonds are not acceptable.

Multiple Bonds - which are not stacked bonds, however, are acceptable. Bonds that are insured by the same corporate surety company are not stacked if the power of attorney of one of the bonds is equal to or greater than the total amount of bail set. Bonds that are insured by different corporate surety companies, although posted for the same defendant and on the same case, are not stacked bonds.

INSERT SURETY BOND

C. BAIL EXONERATION (PC 1195)

1. The removal of responsibility from the depositor to guarantee the defendant's appearance.
2. When exoneration occurs
 - a. O.R. release granted (PC 1304)
 - b. Good cause surrender by depositor (PC 1300)
 - 1) May be made with a certified copy of the undertaking of the bail.
 - 2) May be made with certified copy of the certificate of bail deposit.
 - 3) May be made with an affidavit by bail agent/surety containing all the information that would have been contained in the certified copy of the undertaking.
 - c. Defendant's motion to reduce bail granted.
 - d. Case dismissal/acquittal (PC 1303)
 - e. Judgment is pronounced (PC 1195)
 - f. Remanding accused to custody on conviction (PC 1166)

D. BAIL FORFEITURE (PC 1305)

1. The court shall, in open court, declare forfeited the undertaking of bail or the money or property deposited as bail if the defendant fails to appear when his/her presence has been lawfully required. (PC 1305(a))
2. The clerk shall require the appropriate agency to enter each bench warrant issued on a private surety-bonded felony case into the National Crime Information Center (N.C.I.C.). (PC 980; PC 1196)

If the agency fails to enter the bench warrant into NCIC and the court finds that this failure prevented the bondsman from arresting/detaining the defendant, the forfeiture shall be set aside and the bond exonerated.

3. Surety or depositor shall be released of all obligations under the bond if any of the following conditions apply:
 - a. The clerk fails to mail the notice of forfeiture within 30 days after the entry of the forfeiture. (PC 1305(b)(1))
 - b. The clerk fails to mail the notice of forfeiture to the surety at the address printed on the bond. (PC 1305(b)(2))
 - c. The clerk fails to mail a copy of the notice of forfeiture to the bail agent at the address shown on bond. (PC 1305(b)(3))

Note: The 180-day period of forfeiture is extended 5 days to allow for mailing.

4. If the defendant appears (voluntarily or in custody) within 180 days of the date of forfeiture or within 180 days of the date of mailing of the notice of forfeiture, the court shall vacate the order of forfeiture and exonerate the bond. (PC 1305(c)(1))

Includes arrests made outside of the county.

5. In lieu of exonerating the bond, the court may order the bond reinstated and the defendant released on the same bond if both of the following conditions are met under PC 1305(c)(4)(A) & (B):
 - a. The bail agent is given notice and does not object.
 - b. The bail agent has not surrendered the defendant.
 - c. The court may require a re-assumption notice.
 - 1) If it believes that sufficient excuse may exist for the failure to appear, the court may continue the case to allow the defendant to appear without ordering a forfeiture of bail or issuing a bench warrant. (PC 1305.1) The court then makes a finding that good cause has been found not to forfeit bail.
 - 2) If, after the court has made the order, the defendant without sufficient excuse, fails to appear on or before the continuance date set by the court, bail shall be forfeited and a warrant for the defendant's arrest may be ordered issued. (PC 1305.1)
6. The surety agent (or depositor) has 180 days to produce the defendant to the court. At the expiration of the 180-day period, if the defendant has not been surrendered or arrested, a summary judgment shall issue and the bail agent is responsible for paying the entire amount of the bond to the court. (PC 1306(a))
7. The bail agent may file a motion to extend the 180-day period (toll time) if he/she feels that an additional amount of time will be needed to secure the arrest of the defendant.

The court, after hearing said motion, may extend the time for an additional 180-day period. (PC 1305.4)
8. The court must enter the summary judgment within 90 days of the expiration of the 180-day forfeiture period, or the bond is exonerated. (PC 1306(c))

INSERT NOTICE OF FORFEITURE

INSERT SUMMARY JUDGMENT

E. WARRANTS

1. Arrest Warrants

a. Definition

An arrest warrant is a written order which is made on behalf of the state and is based upon a complaint issued pursuant to statute and/or court rule and which commands law enforcement officer to arrest a person and bring him before a magistrate. (*Black's Law Dictionary*)

An arrest warrant is issued at the time a Complaint is filed charging a public offense. The Magistrate has to be satisfied that reasonable grounds exist to believe defendant may have committed the crime. (PC 813 (a)) Arrest warrants are issued prior to the defendant's first appearance in court, i.e., prior to arraignment.

b. Form and Content of Arrest Warrant (PC 814- PC815)

1) Code provides basic language for the arrest warrant. The form may include defendant's identification information to facilitate service of warrant:

- a) Name of defendant, or if unknown, defendant may be designated by any name.
- b) Date of issuance.
- c) City/county where issued.
- d) Signature of magistrate, judge, justice or other issuing authority with the title of his office.
- e) The name of the court or issuing agency.

c. Amount of Bail and Time of Service (PC 815a, PC 840)

- a) Magistrate must fix bail at time of issuance of warrant.
- b) Bail must be reasonable and sufficient for the appearance of the defendant after arrest.
- c) Warrant must contain a signed statement from the issuing magistrate stating the amount of bail.
- d) Arrest for a felony may be made at any time of day or night.
- e)

2. Ramey Warrants

Definition

An arrest warrant is required under the California Supreme Court case *People vs. Ramey* to enable an officer to enter a dwelling to make an arrest. That case held that in the absence of exigent circumstances, a warrant must be obtained prior to an intrusion into the home for the purpose of affecting an arrest. This warrant is issued before the complaint is filed when the officer wishes to arrest a suspect before the complaint is filed.

3. Bench Warrants

Definition

Process issued by the court itself, or “from the bench”, for the attachment or arrest of a person; either in case of contempt, or where an indictment has been found, or to bring in a witness who does not obey the subpoena. (*Black’s Law Dictionary*)

Bench warrants are issued after the court has obtained jurisdiction over the defendant and they seek to return the defendant before the court for further proceedings.

Bench warrants should be issued when:

- Defendant fails to appear as required by law.
- Ordered by court to personally appear at specific date and time.
- Released on bail and ordered by court or person authorized to accept bail or personally appear at specific date and time.
- Released from custody on own recognizance and promises to personally appear at specific date and time.
- Released from custody by citation and signed a promise to appear at a specific date and time.
- Authorized to appear by counsel and ordered to appear at specific date and time.
- Ordered to appear at a specific date and time after information or indictment has been filed.
- Defendant was discharged on bail and failed to appear (PC 979).

- a. Form of Bench Warrant (PC 981)
 - 1) Code provides basic language for bench warrant.
 - 2) Form may include defendant's identification information to facilitate service of warrant.
- b. Amount of Bail (PC 982)
 - 1) Standard Bail Schedule (PC 1269b(b))
 - 2) Bench warrant must contain an endorsement signed by the clerk to the following effect: "The defendant is to be admitted to bail in the sum of _____ dollars."
 - 3) Criteria considered when setting bail (PC 1275(a))
 - a) Seriousness of offense.
 - b) Protection of the public.
 - c) Defendant's prior criminal history.
 - d) Ties to the community.
 - e) Funds not feloniously obtained.
 - f) Alleged injury to the victim.
 - g) Alleged threats to the victim or witness.
 - h) Alleged use of a firearm or other deadly weapon.
 - i) Alleged use or possession of controlled substances.
- c. Bench Warrant Issued and Held
 - 1) Bench warrant is not physically prepared but "stayed" to a specific date.
 - 2) Forfeiture of bail still goes forward unless it is deferred (PC 1305.1) for specific reasons stated on the record. The court states a finding of good cause not to forfeit bail.
 - 3) When defendant appears, the bench warrant is quashed or withdrawn.
 - 4) When bench warrant is to be prepared for service, it is released.

d. Bench Warrant Issued Forthwith

Clerk must note order in minutes.

e. Recall of Warrant

1) Definition

2) To take back, cancel, revoke.

3) Recall occurs when:

a) Bench warrant was served (defendant arrested).

b) Defendant surrendered (walked into court on his/her own).

c) The order to recall a bench warrant must be clearly documented in the minutes.

d) The court may be liable for wrongful arrest on the clerk's failure to properly recall a warrant.

4. Search Warrants (PC 1523 – 1542)

a. Definition

A search warrant is an order in writing, in the name of the people, signed by a magistrate, directed to a peace officer, commanding him or her to search for a person or persons, a thing or things, or personal property, and, in the case of a thing or things or personal property, bring the same before the magistrate.

b. Process

A search warrant shall be executed and returned within 10 days after the date of issuance. A warrant executed within this period shall be deemed to have been timely executed and no further showing of timeliness need be made. After the expiration of 10 days, the search warrant is void if not executed.

The documents and records of the court relating to the search warrant need not be opened to the public until the execution and returned of the warrant or the expiration of the 10-day period after issuance. Thereafter, if the search warrant has been executed, the documents and records shall be open to the public as a judicial record.

5. Summons

a. Definition

A summons in a criminal action is an order directed to the sheriff or other proper officer requiring notification the person or entity named that an action has been commenced against them in the court. The summons requires an appearance for a specific date, time, and place.

b. When Issued (PC813(a))

- 1) Complaint is filed charging a public offense.
- 2) Magistrate is satisfied reasonable grounds exist to believe defendant may have committed the crime.
- 3) Prosecutor requests a summons be issued *in lieu* of an arrest warrant.

c. When Summons May Not Be Issued (PC 813(e))

- 1) Offense charged involves violence.
- 2) Offense charged involves a firearm.
- 3) Offense charged involves resisting arrest.
- 4) One or more outstanding arrest warrants for the person exist.
- 5) The prosecution of the offense would be jeopardized.
- 6) There is a reasonable likelihood that the offenses would continue or that the safety of persons or property would be imminently endangered.
- 7) There is reason to believe the person would not appear.

d. Form of Summons (PC 813(B))

Summons shall include notice to the defendant to complete the booking process prior to making the first court appearance and instructions how to complete the booking process.

e. Failure to Appear (PC 813(c))

If a defendant has been properly served with a summons and thereafter fails to appear at the designated time and place, a bench warrant for arrest shall issue. In the absence of proof of actual receipt of the summons by the defendant, a failure to appear shall not be used in any future proceeding.

6. Attachment for Defaulters

Definition

An order issued for the arrest of an individual, other than the defendant (a defaulting witness, attorney, custodian of records, or contemnor ...) These are also known as civil bench warrants and body attachments.

- Counsel requesting warrant should provide a description of the subject and proof that the subject was noticed to appear.
- At the conclusion of the trial or hearing, the clerk should bring the outstanding attachment to the attention of the court to determine if it should remain active. It is not automatically recalled as the court may wish to take action against the person if and when they are located.

III. GRAND JURY

A. GRAND JURY PROCEEDINGS (PC 888-945)

1. Definition and Purpose

The purpose of the grand jury is not to decide the guilt or innocence of a person. It is instead to determine whether there is sufficient evidence to bring a person to trial. If a person is indicted, they will have the opportunity to defend themselves at the ensuing trial. The grand jury has broad investigative powers; it may compel witnesses to appear and answer questions or submit records. Felony matters are presented to the grand jury by the District Attorney when it is determined that doing so would be more expeditious than the filing of a complaint in a limited jurisdiction court.

A body of the required number of persons returned from the citizens of the county before a court of competent jurisdiction, and sworn to inquire of public offenses committed or triable within the county.

- 23 jurors in counties over 4,000,000
- 11 jurors in counties of 20,000 or less
- 19 jurors in all other counties

Indictment - an accusation in writing, presented by the grand jury to a competent court, charging a person with a public offense. (PC 889)

2. Areas of Inquiry

- a. Offenses and matters of civil concern.
- b. Offenses known to any member of the grand jury.
- c. Management of local prisons and misconduct of public officers.
- d. Sales and transfers of land.
- e. Any criminal matter at the request of the Attorney General.
- f. County operations, accounts and records and city or joint powers agencies.

3. Secrecy of Proceedings

- a. No persons may be present except those specified by statute.
- b. Any disclosure of grand jury proceedings before the arrest of the defendant is a misdemeanor.

4. Finding and Endorsement as a "True Bill"

- a. Indictment shall be endorsed as a "true bill".
- b. The grand jury foreman shall sign endorsement.
- c. Indictment shall list the witnesses that appeared before the grand jury.

5. Presentation and Filing of Indictment (PC 940)

- a. Court inquires of presiding juror as to the number of concurring votes.
- b. The minimum number of concurring votes pursuant to statute follows:
 - 1) 14 of 23 grand jury panel members in counties of over 4,000,000
 - 2) 8 of 11 grand jury panel members in counties of 20,000 or less
 - 3) 12 of 19 grand jury panel members for all other counties
- c. Court makes a finding that each indictment is a True Bill.
- d. Court directs the clerk to file the indictments and issue the warrants.

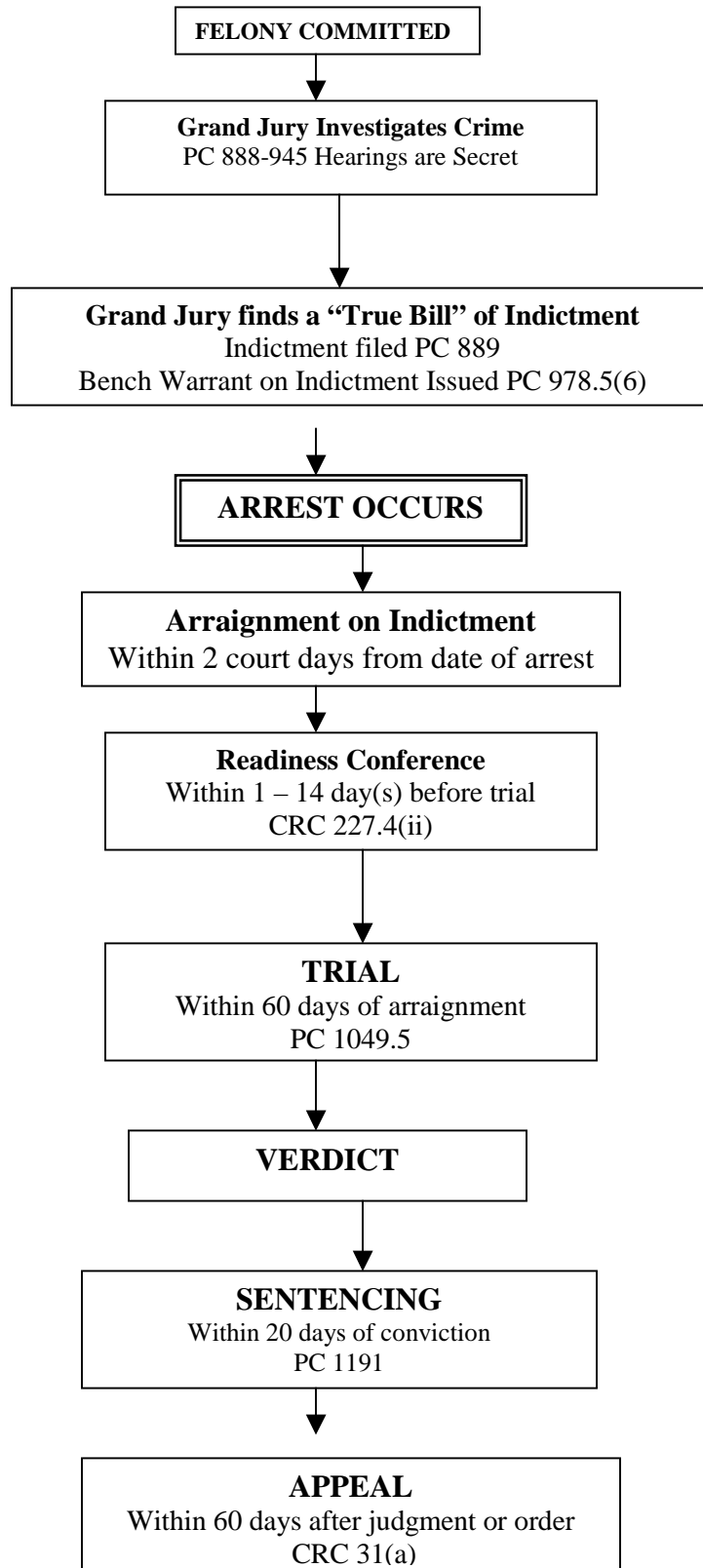
6. Service of Arrest Warrants on Indictment

- e. Defendant in custody – warrant issued, arraignment in superior court set within two court days.
- f. Defendant not in custody – arrest warrant is issued and delivered for service.
- g. The indictment remains confidential until the defendant is arrested or surrenders himself to the court.

7. Grand Jury Transcript

- a. Grand Jury reporter must file a transcript of the testimony heard by the grand jury within 10 days of the filing of the indictment. (PC 938.1(a))
- b. Copies are distributed to counsel upon filing with the court.
- c. Original does not become open to public for 10 days after last defendant picks up his copy. Counsel has this 10-day period to file a motion to seal the transcript permanently.

TIME LINE - INDICTMENTS



INSERT COPY OF INDICTMENT

Insert 2nd page of Indictment

Insert Overview of Felony Criminal Case Chart

IV. ARRAIGNMENT TO PLEA

A. ARRAIGNMENT ON THE INFORMATION

1. Definition

The proceedings in which an accused person is brought before a judge to hear the charges filed against him or her and to enter a plea.

2. Elements

- a. Determining defendant's true name and date of birth if the defendant appears to have been a minor at the time the offense was committed
- b. Appointment/re-appointment of counsel (PC 987.2)
- c. Reading of the accusatory pleading (or waiver of reading)
- d. Delivering a true copy of the accusatory pleading to the defendant
- e. Advising defendant of constitutional rights
- f. Asking defendant to enter a plea or having counsel enter not guilty plea on his/her behalf (PC 1017)

3. Pleas (PC 1016)

- a. Guilty
 - 1) Definition - A formal admission in court as to guilt which a defendant may make if he or she does so intelligently and voluntarily. *Black's Law Dictionary, 5th Edition.*
 - 2) Effect - No trial on the issue of guilt is necessary. A trial on the issue of penalty may be held on cases in which special circumstances are alleged.
- b. Not Guilty
 - 1) Definition - A plea entered by the accused to a criminal charge. *Black's Law Dictionary, 5th Edition.*
 - 2) Effect - Since the defendant has denied the charges, the case will be set for trial to determine the defendant's innocence or guilt.

c. Nolo Contendere

- 1) Definition - "I will not contest it." A plea in criminal court, which has a similar legal effect as pleading guilty. The defendant does not admit or deny the charges, though a fine or sentence may be imposed. Black's Law Dictionary, 5th Edition
- 2) Effect - A nolo plea cannot be used against the defendant in a civil action based upon the same acts. This plea is subject to the approval of the court. After the court approves the plea, the court will find the defendant guilty.

d. Former Judgment of Conviction or Acquittal (Double Jeopardy)

- 1) Definition - A person cannot be tried for the offense more than once; this is fundamental common law and constitutional right of the defendant affording protection against his being again tried for the same offenses. Black's Law Dictionary, 5th Edition.
- 2) Effect - The court must hold a hearing to determine the validity of the claim. The issue is "Is the prior conviction or acquittal true?" If yes, the prosecuting attorney may move to dismiss the case or the court must dismiss the case. If the issue is not true, the defendant must enter a new plea.

e. Once in Jeopardy

- 1) Definition - A phrase used to express the condition of a person charged with a crime who has once already, by legal proceedings, been put in danger of conviction and punishment for the same offense.
- 2) Effect - The court must hold a hearing to determine the validity of the claim. The issue is "Was the defendant previously in jeopardy for this same offense?" If yes, the prosecuting attorney may move to dismiss the case or the court must dismiss the case. If the issue is not true, the defendant must enter a new plea.

f. Not Guilty by Reason of Insanity (PC 1026)

- 1) Definition - A plea entered by the accused denying he is guilty of the alleged charges since he was insane at the time the crime was committed.

- 2) Effect - Case proceeds on the not guilty plea and on the presumption that no other plea (reason of insanity) was entered. If the defendant is found guilty, then the case proceeds on the issue of the sanity of the defendant at the time the crime was committed.

4. Mutual Discovery Orders (PC 1054)

- a. Counsel are mandated by statute to conduct timely pretrial discovery.
- b. Purpose of the statute is to limit the need for judicial enforcement of discovery rules.

5. Setting Future Dates (CRC 4.100)

- a. A motion hearing date or due date for all pretrial motions
- b. A readiness conference date, within 1-14 days before trial
- c. A trial date, within 60 days of arraignment (PC 1049.5, PC 1382)
 - 1) Defendant may waive the 60-day trial requirement
 - 2) Time waivers **must** be placed in the minutes.

6. Information Filed

Information must be filed within 15 days of the preliminary hearing. (PC 860, CRC 4.110). Failure to file an information timely is grounds for dismissal of the case.

7. Defendant Fingerprint Cards (PC 992)

- a. Defendant must provide a right thumbprint after arraignment on a felony offense.
- b. Thumbprint is to be placed on Judicial Council Form CR-100.
- c. Fingerprint card will be filed in court file until sentencing at which time it will be attached to sentencing minute order and retained as a permanent record in the court file.

8. Preliminary Hearing Transcripts

- a. The court reporter must file a transcript of the Preliminary Hearing within 10 days. (PC 869(e))
- b. An original for the court file, a copy for the District Attorney and a copy for each defendant are submitted for filing.
- c. Preliminary Hearing Transcripts are not confidential.
- d. Transcripts can be used in conjunction with PC 995 and PC 1538.5 motions.

9. Defendant's Presence at Felony Hearings (PC 977(b)(1))

- a. Arraignment
- b. At the time of plea
- c. During the preliminary hearing
- d. At trial when evidence is taken
- e. At sentencing (except when sentenced under PC 1203.2a)
- f. At all other proceedings unless he/she executes, in open court, a written waiver of his/her right to be personally present. The written waiver must be approved by his/her counsel and filed with the court. (PC 977 Waiver)

B. PRE-TRIAL MOTIONS & CONFERENCES

1. Definition and Benefits to Parties and the Court

A motion is an oral or written application made to a court for the purpose of obtaining a ruling or order directing some act be done in favor of the applicant. Motions are usually made within the framework within an existing action or proceeding and are ordinarily made on notice, but some motions may be made without notice.

The procedure for most common motions is prescribed by statute although some are prescribed by case law.

- Motion can dispose of the case entirely. No need for trial.
- Ruling may cause a change of plea. No need for trial.
- Issues are clarified and points of common ground are found. Trial will take less time.
- Discovery compliance.

2. Time for Filing

- a. Pretrial motions shall be served and filed 10 days prior to hearing date. (CRC 4.111)
- b. All opposing papers must be filed at least 5 days before the hearing.
- c. All reply papers must be filed at least 2 days before hearing.
- d. Exceptions:
 - 1) Motions to continue criminal hearings require notice 2 court days in advance. (PC 1050)
 - 2) Motions for Discovery (Pitchess Motions) require notice pursuant to CCP 1005.
 - 3) Motions to Suppress Evidence (PC 1538.5) require service on the District Attorney at least 10 judicial days prior to the hearing.

3. Motion Hearings

Moving party has the burden of proof and motions may be heard one of two ways:

- Orally by the court (counsel present oral arguments)
- Submitted on the written documents (or transcripts) already filed.

4. Ex-Parte Motions

Definition

Submitted by one side without notice to the opposing party for example; appointment of investigators, medical evaluations, appointment of experts or additional funds to assist the defense and Capital case request for funds (PC 987.9).

COMMON MOTIONS AND PRETRIAL PROCEEDINGS

Motion: An oral or written application made to a Court for the purpose of obtaining a ruling or order directing some act to be done in favor of the applicant. Written motions must be filed with the court at least 10 calendar days prior to the hearing date; any oppositions to the motion must be filed and served at least 5 calendar days before the hearing date; and all replies to any oppositions must be filed and served at least 2 court days before the hearing date. California Rules of Court 4.111

1. **Motion for continuance:** A motion for continuance of a court hearing can be made under Penal Code Section 1050. This motion is an exception to the timeframes cited above and written notice can be filed 2 court days in advance of the hearing.
2. **Pitchess Motion:** A discovery motion to disclose any relevant material in the personnel file of a law enforcement officer that may have affected the arrest of a defendant, (e.g.: history of excessive force). *Pitchess vs. Superior Court*, (1974) 11 Cal.3rd 531.
3. **Motion to Suppress Evidence:** A defense motion to suppress evidence obtained as a result of an illegal search or seizure. Penal Code Section 1538.5.
4. **Marsden Motion:** A defense motion to have appointed counsel relieved due to inadequate representation. *People vs. Marsden*, (1970) 2Cal.3rd 118.
5. **Miranda Motion:** A defense motion to suppress statements and/or confessions alleged to have been made by the defendant without having being admonished of legal rights. *Miranda vs. Arizona*, (1966) 384 US 436.
6. **Hitch/Trombetta Motion:** A motion to suppress testimony based on loss or destruction of evidence by prosecution. (e.g.: Urine, sperm, or blood samples) *People vs. Hitch* (1974) 12 Cal.3rd 641, *People vs. Trombetta* (1985) 173 Cal.App.3rd 1093.
7. **Boykin-Tahl/Mendella:** A defense motion to dismiss “prior” allegations from the accusatory pleading so that the prior conviction may not be used to enhance punishment/sentencing. *Boykin vs. Alabama* (1969 395 US 238; *In re Tahl* (1969) 1 Cal.3rd 122, 81 CR 577; *People vs. Superior Court (Mendella)* (1983) 33 Cal.3rd 754.

8. **Romero Motion:** A motion to dismiss a felony “Prior Strike” allegation prosecuted under 667(b)-(i) – 1170.12(a)-(d) Penal Code, *People vs. Superior Court(Romero)* (1996) 13 Cal.4th 497.
9. **1381/1381.5 P.C. Motion:** A motion to dismiss based on the failure of the District Attorney’s office to bring a matter into court within a specified period of time when a defendant is in custody or has been in custody for over 90 days and has made a written request to bring that case before the court. *Rost vs. Municipal Court*, (1960) 184 Cal. App.2d 507.
10. **Motion for New Trial:** A motion made requesting a new trial based on the allegation that misconduct or a judicial error occurred in court proceedings, *Penal Code Section 1181*.
11. **Motion for Arrest of Judgment:** A motion to arrest judgment rendered pursuant to any plea, finding, or any guilty plea based on defects in the accusatory pleading unless waived by failure to demur. *Penal Code Section 1185*.
12. **995 P.C. Motion:** A motion to set aside Information or Indictment based on the grounds that the evidence presented at the preliminary hearing or at the Grand Jury hearing was legally insufficient.
13. **1275.1 P.C. Hearing:** A hearing to determine the legitimacy of defendant’s proffered bail. This authorizes the Court to deny bail deposited believed to have been feloniously obtained.
14. **CHANGE OF VENUE (PC 1033-1038; CRC 4.150-4.162):** The transfer of a civil or criminal case from one judicial district to another (one county to another).



5. Benefits of Pre Trial Conferences

- a. Conferences can dispose of the case entirely. No need for trial.
- b. Rulings may cause the defendant to change his/her plea. No need for trial.
- c. Issues are clarified and points of common ground are found. Trial will take less time.

6. Steps in Negotiation

- a. Court and counsel confer off the record.
- b. Both sides present their perspective of and position on the case.
- c. Defense counsel initiates negotiations. Prosecutor may agree or make counter offer.
- d. Court can guide conference and make recommendations to keep negotiations from reaching an impasse.
- e. Defendant makes decision whether to accept or refuse negotiated plea.

7. Outcome

- a. Case is non-negotiable.
 - 1) Trial date is confirmed.
 - 2) Case proceeds to prosecution.
- b. An agreement is reached and defendant changes his/her plea.
 - 1) Felony pleas of guilty/no contest are made in open court on the record.

C. EVENTS FOR CHANGE OF PLEA

1. Court questions defendant as to:

- a. Defendant's true name
- b. Any influence of alcohol/drugs present at the time the crime was committed.
- c. If defendant has any questions
- d. That defendant has an understanding of relinquished rights (Boykin-Tahl). The record must show explicit waivers of these constitutional rights.
 - 1) To trial by jury
 - 2) To confront and cross-examine witnesses
 - 3) To self-incrimination
 - 4) To present a defense, including subpoena power of the court
- e. Additional Inquiries for Plea Bargain
 - 1) Whether the inducement for the plea is proper
 - 2) The factual basis for the guilty plea
 - 3) The nature and degree of coerciveness
 - 4) Whether a promise of leniency to a third party was a significant consideration of defendant in choosing to plead guilty
- f. That defendant understands consequences of plea.
 - 1) Maximum penalties
 - 2) Imposition of restitution fine under PC 1202.4
 - 3) Probation ineligibility
 - 4) Maximum parole period and parole violations

- 5) Registration requirements, if any
 - a.) Sex offenders (PC 290)
 - b.) Arson offenders (PC 457.1)
 - c.) Narcotics offenders (HS 11590)
- 6) Revocation or suspension of driving privilege
- 7) Potential effect on immigration status (PC 1016.5)
- 8) Strike prior
- g. If any promises or threats made regarding entering the plea
- h. If plea was being entered voluntarily
- i. If defendant has an understanding of the impact of probation or the maximum punishment for the crime

2. Acceptance of Plea

- a. Court recites plea bargain.
- b. Court explains that it may consider any dismissed counts when sentencing and in ordering restitution. (Harvey Waiver).
- c. Court reads count(s) to which the defendant will plead to.
- d. Defendant must orally enter the same plea. Counsel will state satisfaction with the plea.
- e. Court finds factual basis for the plea.
- f. Defendant must be advised that he/she has the right to be sentenced by the judge taking the plea and if that will not be the case, he/she must waive that right. (Arbuckle Waiver)
- g. Court accepts plea. Prosecutor will move to dismiss any remaining counts and allegations.

3. Set Sentencing Hearing

- a. Probation referral, request or waive preparation of a pre-sentence report.
- b. Setting time for pronouncement of judgment (20 judicial days - PC 1191, PC 859a, 1462)

V. FELONY SENTENCING

A. SENTENCING MINUTE ORDERS

1. Should indicate

- a. Appearances of counsel and parties
- b. Any motions made, by whom, and rulings thereon
- c. The names of any persons who address the court (victim, kin, friends)
- d. Court findings
- e. The grant or denial of probation
 - 1) If probation is granted:
 - a) *Imposition* of sentence suspended or *execution* of sentence suspended
 - b) Type of probation: informal (unsupervised); formal (supervised)
 - c) Length of probation
 - d) Terms and conditions of probation
 - e) Time in custody
 - i. Date and time to report to jail if not taken immediately into custody
 - ii. Date and time to report to jail and for release if defendant is to serve weekends
 - f) Days of public service
 - g) Hours of volunteer work
 - h) Monetary punishments including any payment schedule
 - i) Orders for defendant to pay for probation costs
 - j) Finding and order for defendant to pay attorney fees
 - k) Fourth Amendment waiver
 - l) Ignition interlock devices

- m) AIDS Testing pursuant to PC 1202.1
- n) Registration requirements (PC 186.30, PC 290, PC 457.1, HS 11590)
- o) Submit specimens for DNA analysis (PC 296)
- p) Stay away or protective orders
- q) Custody credits
- r) Future hearing information
- s) Defendant's custody status
- t) Exoneration of bond, if any
- u) Any other court orders

2. If sentenced to state prison:

- a. The code section number including subsection(s), the time imposed, and sentence relationship of each count, enhancement, and prior conviction the defendant was convicted of.
- b. If other than the middle term imposed, a court finding that circumstances in mitigation or aggravation.
- c. If any stays, the authority for the stay (PC 654, PC 1170.1(a)).
- d. Statement as to the total time imposed.
- e. Monetary punishments (restitution, restitution fines, parole fine, fees).
- f. Order for AIDS testing pursuant to PC 1202.1.
- g. Denial of visitation with minor victim pursuant to PC 1202.05.
- h. Registration requirements (PC 186.30, PC 290, PC 457.1, HS 11590).
- i. Custody credits (PC 4019; PC 2933.1).
- j. Advisement regarding parole (CRC 4.433, PC 1170(c)).
- k. Appeal rights, if after a trial or probation revocation. (CRC 4.305, CRC 4.470).
- l. Court recommendations to the CDC regarding defendant's housing.
- m. Submit specimens as required by PC 296 for DNA analysis.

B. FELONY PRE-SENTENCING MATTERS

1. Time for Pronouncement of Judgment (PC 1191)

- a. Must be within 20 judicial days of plea, finding, or verdict of guilty.
- b. May be extended no more than 10 days to hear a motion for new trial or motion to arrest the judgment.
- c. May be further extended until any proceedings to grant or deny probation have been disposed of.
- d. Time waivers must be taken if sentencing is set later than statute dictates.
- e. Court may also extend the sentencing date if one of the following occurs:
 - 1) Defendant is referred for diagnostic evaluations.
 - 2) Defendant's current mental competency is questioned.

2. Defendant's Presence (PC 1193)

- a. Defendant must be personally present unless the following provisions are met:
 - 1) Defendant states in open court on the record or in a notarized writing that judgment may be pronounced against him in his absence; and
 - 2) Defendant is represented by counsel when judgment is pronounced; and
 - 3) Court approves defendant's absence during pronouncement of judgment.
- b. Court may pronounce judgment in defendant's absence if the following occurs:
 - 1) Reasonable diligence has been made to procure defendant's presence; and
 - 2) Court finds it is in the interest of justice to pronounce judgment in defendant's absence.

c. Defense Counsel

- 1) Should be present with the defendant.
- 2) Ensures the sentence imposed is not based on misinformation or misreading of the court records.

d. Sentencing Judge

- 1) Must be the same judge that took the plea. (People v. Arbuckle (1978) 22 Cal.3d 749)
- 2) Defendant has the right to withdraw his plea if the judge is not available. Defendant can waive this right on the record. (Arbuckle waiver).

3. Motion for New Trial (PC 1181)

- a. Motion may be made orally or in writing depending on local policy.
- b. Grounds for new trial:
 - 1) Trial unlawfully held in defendant's absence.
 - 2) Jury received evidence out of court.
 - 3) Misconduct of the jury.
 - 4) Verdict reached by lot.
 - 5) Judicial error.
 - 6) Misconduct of counsel.
 - 7) New material evidence discovered.
 - 8) No available transcript of the proceedings due to unavailability of the court reporter.
- c. Any motion for new trial must be ruled on before a sentence can be imposed.

The court's reasons for granting or denying a motion for new trial must be stated for the record and appear in the minutes.

4. Motion for Arrest of Judgment (PC 1185)

- a. Motion is based on defects in the accusatory pleading, unless waived by failure to demur.
- b. Court may, on its own motion, arrest judgment for defects in the pleading.
- c. Effect of order arresting judgment places defendant in a situation as if pleading were never filed.
- d. Defendant's bail status is discretionary with the court (DA may re-file charges). Bail can be held to allow the DA to re-file.

5. Probation Reports (PC 1203(b))

- a. Preparation.
 - 1) Court will refer case at time of conviction to a probation officer for investigation and preparation of a written report.
 - 2) Probation officer will examine the circumstances surrounding the crime, defendant's prior history and record.
 - 3) Written report will include probation officer's findings and recommendations to the court.
 - 4) Conditions of probation will be included in the report if a grant of probation is recommended.
 - 5) Report should be delivered to the court 5 days, or upon request, 9 days prior to the hearing.
- b. Confidentiality of Report (PC 1203.05)
 - 1) Report is **confidential before** judgment is pronounced.
 - 2) Report may be viewed by the court, the clerk, the defendant, defense counsel, prosecuting attorney, and probation officer without a court order.
 - 3) Requests to view the report prior to sentencing should be referred to the court through a motion.

- 4) Any probation report filed with the court may be inspected and copied as follows:
 - a) Within sixty days from the date judgment is pronounced.
 - b) At any time by order of the court.
 - c) By any person authorized/required by law to inspect/receive copies.
 - d) By the district attorney of the county at any time
 - e) By the subject of the report at any time.
- 5) Processing of report after hearing
 - a) File stamp original, signed report.
 - b) Follow local court confidentiality procedures for filing.
- 6) Waivers
 - a) Defendant may waive (on the record) the preparation of a probation report.

6. Minor Pre-Sentence Diagnostic Evaluation (WI 707.2)

a. Definition:

- 1) An order to place a minor, tried as an adult, in a diagnostic facility of the California Youth Authority for evaluation.
- 2) The order for an evaluation is *mandatory* for all juvenile defendants who were under the age of 16 when the crime was committed and *optional* for defendants who were age 16 or 17.
- 3) CYA will prepare a report reflecting a diagnosis and recommendation for the defendant's placement within 90 days.
- 4) Criminal proceedings **are suspended** pending the evaluation.

b. Sending the defendant to CYA for evaluation:

- 1) The evaluation is ordered pursuant to WI 707.2.
- 2) The defendant is remanded to local custody.
- 3) A hearing date for the defendant's return and sentencing is set at least 90 days in the future.

- c. The referral packet to CYA should contain the following:
 - 1) Referral Document - CYA Referral form 1.411.
 - 2) Three (3) copies of the minute order, Information, and findings for adult court referrals for diagnostic reports. (WI 707.2).
 - 3) Three (3) copies of the probation report.
 - 4) Three (3) copies of the fitness report for diagnostic studies per WI 707.2.
 - 5) Psychological and Medical Reports - Two (2) copies of all psychiatric, psychological and medical reports.
 - 6) Arrest Report - One (1) copy of the arrest report.
 - 7) The entire packet is sent to CYA in Sacramento and the defendant remains in local custody pending acceptance by CYA.
- d. Transferring Defendant To CYA
 - 1) CYA reviews information provided t them.
 - 2) Accept - CYA will send a letter to the court acknowledging acceptance of the minor.
 - a) The letter is file stamped and placed in the case file.
 - b) Certified copies are forwarded to the Sheriff to notify that agency to transport the defendant.
 - 3) Reject - CYA will send a letter informing the court that the defendant is not acceptable to their facility.
 - c) The letter is file stamped and placed in the case file.
 - d) The case will be put on calendar before the sentencing judge for a re-sentencing. Parties are notified.
 - 4) Receipt of the report from CYA.
 - a) The original report is given to the sentencing judge.
 - b) Copies of the report are distributed to the district attorney, defense attorney, and probation officer.
 - c) Verify the return of the defendant to local custody and notify jail of sentencing date (if different from previously set).

- 5) Court will conduct sentencing hearing.
- 6) After the sentencing hearing.
 - a) Collect reports from the district attorney and probation officer.
 - b) File reports per local confidentiality policy.

7. Adult Pre-Sentence Diagnostic Evaluation (PC 1203.03)

- a. Definition:
 - 1) An order to place an adult defendant in a diagnostic facility of the Department of Corrections for evaluation.
- b. CDC will prepare a report reflecting a diagnosis and recommendation for the defendant's placement within 90 days.
- c. Criminal proceedings are suspended pending the evaluation.
- d. Defendant earns credit for time served pending the evaluation.
- e. Sending the Defendant to CDC for Evaluation
 - 1) The evaluation is ordered pursuant to PC 1203.03.
 - 2) The defendant is remanded to local custody.
 - 3) A hearing date for the defendant's return and sentencing is set 90 days in the future.
 - 4) An Order for Placement, Delivery, and Return is prepared. Copies are made and certified.
 - a) A copy of the probation officer's report and a certified copy of the minute order are sent to the Sheriff to go with the defendant when transported.
- f. Receiving the Defendant back from CDC.
 - 1) The original report is given to the sentencing judge.
 - 2) Copies of the report are distributed to the district attorney, defense attorney, and probation officer.
 - 3) Verify the return of the defendant to local custody and notify jail of pending sentencing date.
 - 4) Court will conduct sentencing hearing.

- g. After the sentencing hearing:
 - 1) Collect diagnostic reports from the District Attorney and Probation Officer (PC 1203.03(b)).
 - a) The Probation Officer is only allowed to retain the report if the defendant is granted probation. (PC 1203.03(c))
 - 2) File reports per local confidentiality policy.

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF YOURS**

THE PEOPLE OF THE STATE OF CALIFORNIA

Plaintiff

VS.

Defendant

Case No

**ORDER FOR PLACEMENT,
DELIVERY & RETURN
(P.C. 1203.03)**

The above-named defendant having been duly convicted in the above entitled court of the offense of _____ in violation of Section _____ of the _____ Code and the Court having concluded that a just disposition of the case requires such diagnosis and treatment services as can be provided at a diagnostic facility of the Department of Corrections.

IT IS THEREFORE ORDERED that the above-named defendant be placed temporarily in such diagnostic facility for a period not to exceed 90 days in accordance with the provisions of Section 1203.03 of the California Penal Code.

IT IS FURTHER ORDERED that the Director of the Department of Corrections report to the Court his diagnosis and recommendations concerning the above-named defendant within the said 90 days.

IT IS THEREFORE ORDERED that the Sheriff deliver said defendant to the custody of the Director of the Department of Corrections at the **WASCO STATE PRISON**, Wasco, California.

IT IS FURTHER ORDERED that prior to the **expiration of the ninety (90) day period**, the Director of Corrections shall notify the Sheriff of Our County of defendant's availability for return to Our County Jail, and without further order of the Court, the Sheriff shall return defendant, giving notice to the Clerk of the Court of the defendant's return.

DATED:

Judge of the Superior Court

8. Pre-Sentence Diagnostic Evaluation - Sex Acts with Victim Under 14 Years of Age (PC 288.1)

a. Definition

Evaluation is for a defendant convicted of any sex act with a child under the age of 14.

b. Probation cannot be granted until the court obtains a report on the defendant's mental condition from one of the following:

- 1) A reputable psychiatrist or reputable psychologist that meets the standards in PC 1027.
- 2) A recognized treatment program defined in PC 1000.12 or in PC 1203.066.

c. Criminal proceedings **are not suspended pending this evaluation.**

d. Sending the defendant for evaluation.

- 1) The probation report will contain a recommendation that the defendant be evaluated pursuant to PC 288.1.
- 2) Sentencing should be continued (time will vary) to allow for an evaluation to be done.
- 3) The clerk shall prepare the Order for Evaluation or a referral to a doctor.

e. Include in the referral packet for mental health or doctor:

- 1) Copy of order or minute order.
- 2) Copy of probation officer's report.

f. The report shall consider:

- 1) If granting the defendant probation would be in the best interest of the child victim.
- 2) If rehabilitation of the defendant is feasible.
- 3) If returning the defendant to the family home would be in the best interest of the child victim.

g. Sentencing

- 1) Sentencing will proceed as usual.
- 2) The PC 288.1 report should be treated as confidential and sealed accordingly.
- 3) If the defendant is sentenced to state prison, the clerk should include a copy of the PC 288.1 report in the prison packet.

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF YOURS**

THE PEOPLE OF THE STATE OF CALIFORNIA)	
Plaintiff)	
)	99-233323
vs.)	
)	ORDER FOR EVALUATION
ALEX CATRAZ)	PC 288.1
Defendant)	

IT IS HEREBY ORDERED, that the above-named defendant be made available for examination by **Dr. Doolittle** for the purpose of an evaluation pursuant to PC 288.1.

For the purpose of determining the following:

- * **What is the Defendant's present mental condition?**
- * **Is rehabilitation feasible?**
- * **In your opinion, would a grant of probation be in the best interest of the child victim?**
- * **In your opinion, would returning the defendant to the family home be in the best interest of the child victim?**

IT IS FURTHER ORDERED that the report be filed with the Superior Court by July 28, 2003, requesting said report contain the Superior Court case number and be submitted with three copies.

DATED: July 17, 2003

**ROY BEAN
JUDGE OF THE SUPERIOR COURT**

9. Pre-Sentence Diagnostic Evaluation – Probation and Sex Crimes (PC 1203.067)

a. Definition

- 1) Evaluation is for a defendant convicted of any of the following sex crimes:
 - a) PC 261 - Rape
 - b) PC 262 - Spousal Rape
 - c) PC 264.1 - Rape/Penetration by Foreign Object
 - d) PC 286 - Sodomy
 - e) PC 288 - Lewd and lascivious acts on a child
 - f) PC 288a - Oral Copulation
 - g) PC 289 - Penetration by Foreign Object
- 2) Probation may not be granted unless the court has done all of the following:
 - a) Ordered a PC 1203.03 evaluation or similar evaluation by the probation department.
 - b) Conducted a hearing at time of sentencing to determine if probation would pose a threat to the victim.
- 3) The prosecuting attorney shall notice the victim.

The victim shall be given an opportunity to address the court.
- 4) Order any psychiatric or psychological report ordered under PC 288.1 to include several factors in its report:
 - a) Whether the defendant will be a threat to the victim.
 - b) The defendant's potential for a positive response to treatment.
- 5) Criminal proceedings are **not suspended** pending this evaluation.

b. Sending the Defendant for Evaluation

- 1) The probation report will contain a recommendation that the defendant be evaluated pursuant to PC 1203.067.
- 2) Sentencing should be continued (time will vary) to allow for an evaluation to be done.
- 3) The clerk shall prepare the Order for Evaluation or a referral to a doctor.
- 4) Include in the referral packet for mental health or doctor:
 - a) Copy of order or minute order.
 - b) Copy of probation officer's report.

c. Sentencing

- 1) Sentencing will proceed as usual.
- 2) The PC 1203.067 report shall be treated as confidential and sealed accordingly.
- 3) If sentenced to state prison, the clerk should include a copy of the report in the prison packet.
- 4) A defendant placed on probation shall be placed in an appropriate treatment program designed to deal with child molesters or sexual offenders, if available, in the county.
- 5) A defendant placed in a treatment program shall be responsible for paying the expense of the treatment program.
 - a) Court shall take into consideration the defendant's ability to pay and shall not be denied probation because of the inability to pay.

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF YOURS**

THE PEOPLE OF THE STATE OF CALIFORNIA)	
Plaintiff)	
)	99-233323
vs.)	
)	ORDER FOR EVALUATION
ALEX CATRAZ,)	Penal Code 1203.067
Defendant)	

IT IS HEREBY ORDERED, that the above-named defendant be made available for examination by **Dr. DeMento** for the purpose of an evaluation pursuant to **PC 1203.067**.

The report should take into consideration the following questions:

- * **What is the defendant's present mental condition?**
- * **In your opinion, is the defendant a threat to the victim?**
- * **What is the defendant's potential for positive response to treatment?**

IT IS FURTHER ORDERED that the report be filed with the Superior Court by August 28, 2003, requesting said report contain the Superior Court case number and be submitted with three copies.

DATED: July 17, 2003

**ROY BEAN
JUDGE OF THE SUPERIOR COURT**

C. SENTENCING EVENTS

1. Arraignment for Judgment (PC 1200)

- a. May be waived, minutes must reflect waiver.
- b. Defendant waives formal arraignment or is arraigned.
- c. Defendant is advised of:
 - 1) The nature of the charge(s)
 - 2) His/her plea or the verdict
- d. Defendant must be asked if there is any reason why judgment should not be pronounced.
- e. “No Legal Cause ...” (PC 1201)
 - 1) No new grounds for a motion for new trial or arrest of judgment have been discovered.
 - 2) No question of sanity of the defendant exists.

2. Statement of Victim/Next of Kin (PC 679.02(a)(3), PC 1191.1)

- a. Victim (or next of kin if the victim is deceased) must be notified in writing of the sentencing date.
- b. Statements by the victim may be made orally, written or by video.
- c. Victim does not need to be sworn to make a statement.

3. Dismissal of Remaining Charges by the Prosecuting Attorney (PC 1192.6)

- a. Any case in which felony charges have been amended or dismissed must have the reasons for the amendment or dismissal placed on the record.
- b. Any case in which the prosecuting attorney wishes to dismiss a charge in the complaint, information or indictment must state specific reasons for the dismissal in open court on the record.

4. The prosecuting attorney may give recommendations as to what punishment should be imposed.

5. Pronouncement of Judgment

a. The court will:

- 1) Determine the degree of a crime if not already done at time of conviction. (PC 1192) The offense will be deemed to be the lesser degree if not determined at this time;
- 2) State that he/she has read and considered all submitted reports and statements;
- 3) Make specific findings on all relevant issues;
- 4) Rule on any motions made that have not yet been ruled on;
- 5) Review question of probation; grant or deny, stating reasons for same;
- 6) Review terms and conditions, of probation if granted;
- 7) Impose monetary punishments, including restitution if amounts are known at this time; and
- 8) Note terms of sentence imposed, accounting for every count; identifying the principal and subordinate terms and sentence relationships.

6. Advisements

a. The court will:

- 1) Advise defendant of appeal rights if necessary;
- 2) Advise defendant of deportation if convicted of a felony; and
- 3) Advise defendant about parole.

7. Reasons for Sentence

- a. Court must state reasons for selecting sentence on the record.
- b. Court must make a finding that unusual circumstances exist if probation is granted when a defendant is statutorily ineligible.

8. Miscellaneous Matters

- a. Exonerate any bond posted.
- b. Make orders as to custody status.
- c. Set bail pending appeal, if requested.
- d. Note credit for time already served.
- e. Set a hearing to determine amount of restitution, if requested, or reserve the issue of restitution for a future date.

D. PROBATION

1. Definition

- a. A sentencing alternative for low risk offenders.
- b. Consists of a conditional and revocable release into the community.
- c. May includes fines, a period of time in local custody, and other terms and conditions.
- d. A defendant that successfully completes probation will avoid going to jail/prison.

2. Types of Probation

- a. Formal - under the supervision of a probation officer.
- b. Informal - unsupervised; may be referred to as “probation to the court” or “summary probation.”

3. Imposition of Sentence Suspended (“ISS”)

- a. No sentence is imposed.
- b. Defendant may be placed on formal or informal probation.
- c. Defendant must agree to the terms and conditions of probation.

4. Execution of Sentence Suspended (“ESS”)

- a. Defendant is sentenced to serve time in state prison.
- b. Enforcement of the prison sentence is delayed and the defendant is placed on probation (most often formal) with various terms and conditions.
- c. A violation of probation will most likely result in probation being revoked and the defendant sent to prison for the time previously imposed.

5. Terms and Conditions

- a. Exact terms and conditions of probation will vary based on type of case, criminality of the defendant, and programs available to the court.
- b. Defendant will be ordered to perform certain tasks, successfully complete training/education programs and pay monetary fines or fees.
- c. For formal probation, defendant will be ordered to report to the Probation Department immediately after sentencing or within a set time period after release from custody.

6. Probation Violations (PC 1203.2)

- a. Probation officer brings probationer before the court if the officer has probable cause to believe probationer has violated probation.
- b. Defendant may be arrested by Probation and brought into court.
- c. Probation officer or prosecutor may prepare petition.
- d. Defines charges and the sentence previously imposed.
- e. Specifies condition of probation allegedly violated and how it was violated.
- f. A report is attached summarizing the court status, facts of the original offense, reason for a hearing, an evaluation and recommendation.
- g. Petition may request a bench warrant be issued or an Order to Show Cause be issued with a date for the defendant to appear in court.

7. When a probationer is arraigned on a new charge, he/she must be given notice of any alleged violation of probation.

- a. Defendant must admit or deny the violation.
- b. Admitted - sentencing after revocation hearing is set.
- c. Denied - evidentiary hearing is set.

8. Probation Hearing (Evidentiary Hearing).

- a. Hearing is to prove/disprove the violation.
- b. Testimony and exhibits may be offered.
- c. Hearing may be held in conjunction with proceedings in a new case.
- d. Willful violation not proved:

Probation is reinstated with same terms and conditions.

- e. Willful violation proved:

Probation revoked and sentencing after revocation is set.

9. Sentencing After Revocation.

- a. Depending on the level of the case, a violation of probation may result in a variety of possible actions including, but not limited to, probation being revoked and reinstated with new terms or conditions of probation; revoked and terminated (no other punishment will be imposed on this case but may be on the new case); or revoked and a jail/state prison sentence being imposed.
- b. Court may reinstate probation:
 - 1) On existing terms and conditions.
 - 2) With new terms and conditions.
- c. Court may revoke and terminate probation, then sentence defendant to local jail or state prison.
- d. Court may revoke and terminate probation, then order the previous prison sentence imposed to commence forthwith. (ESS)
 - 1) A prison sentence previously imposed and suspended must be vacated if the court chooses to impose a different sentence.

10. Probation Modification

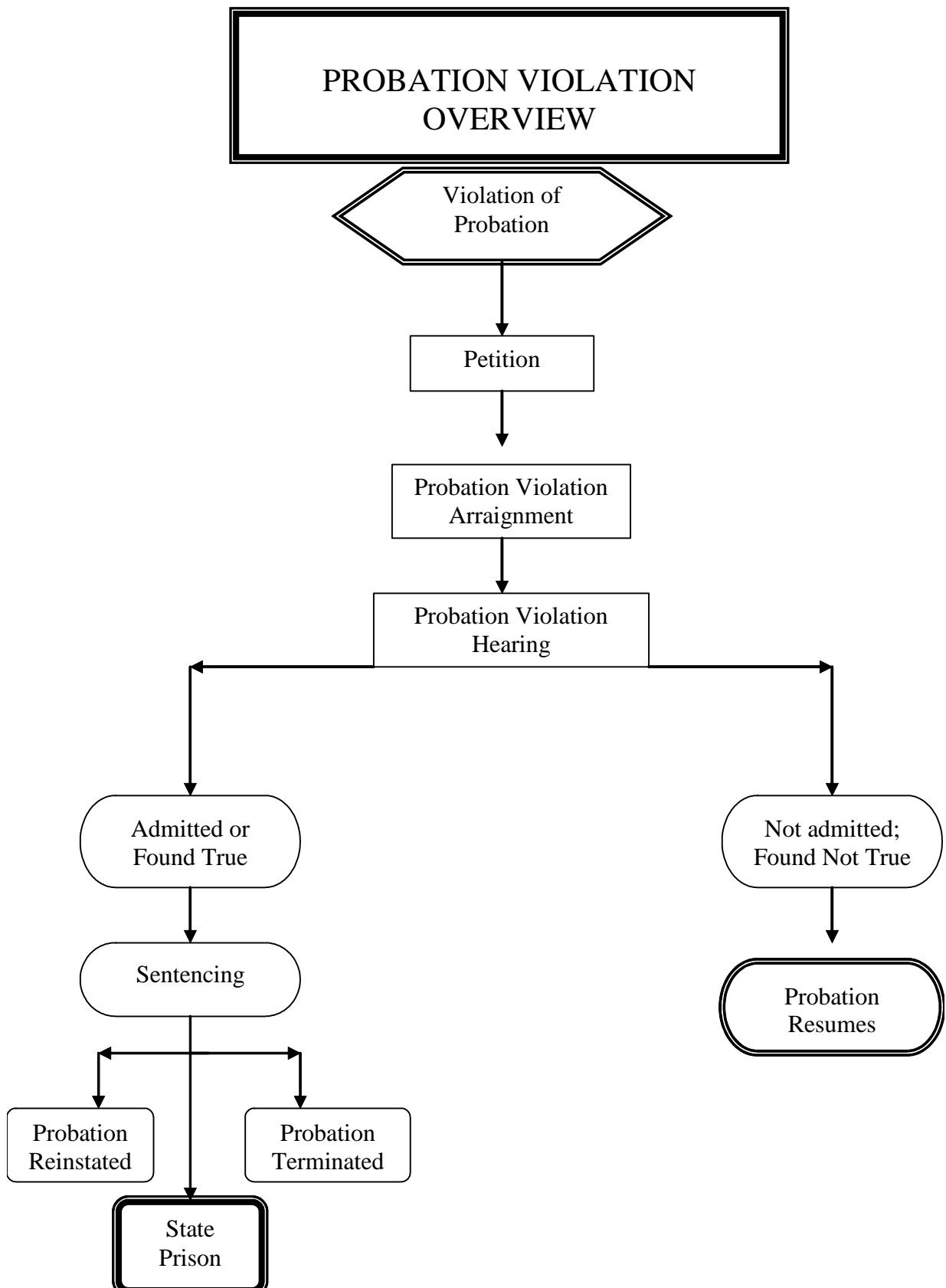
- a. May be requested when a previously imposed condition of probation needs to be augmented, changed or deleted.
 - 1) Request may be made by probationer, his counsel, the probation officer, or any other interested party.
 - 2) Request may be made in writing or set on court's calendar per local policy.
- b. Prosecuting attorney has the right to a hearing in open court before any term of probation is modified.

11. Other Probation Related Hearings

- a. Review - set for the defendant to report on his probation progress.
- b. Proof of Compliance - set for the defendant to submit proof of compliance with some term of probation.
- c. PC 1203.2a - defendant is imprisoned for a subsequent offense and requests in writing to be sentenced in absentia for the offense on which probation was granted.
 - 1) Request is made in writing personally or through counsel.
 - 2) Request is signed in presence of the warden where confined.
 - 3) Within 30 days after notification, probation officer must notify the court.
 - 4) Defendant's request is filed; hearing may be held without the presence of the defendant.
 - 5) Court will find the defendant in violation of probation, terminate probation, and sentence the defendant. Sentence is usually concurrent to any other time being served.

12. Probation Transfers (PC 1203.9)

A defendant placed on probation may have his or her case transferred to a court in the county where he or she resides or to which he or she moves at any time during the period of probation. The receiving county must first be given the opportunity to investigate and determine that the defendant does in fact reside in that county, and may refuse to accept the transfer if he or she does not reside in that county.



E. FINES/PENALTY ASSESSMENTS (PC 1205)

1. Imposition of Fines

Court may impose a fine in lieu of imprisonment and a penalty assessment on the fine.

2. Fine is to be paid:

- a. In full by the date specified by the court, or
- b. In installment payments on dates specified by the court (an additional fee may be charged for processing installment payments) or
- c. In full, forthwith, if no dates are specified when the fine is to be paid.

3. Penalty Assessments

- a. PC 1464.
- b. GC 76000.
- c. The court may waive the penalty assessment.
- d. Assessment will be based on the total fine for all offenses in the event of multiple offenses.
- e. When a fine is suspended, assessment shall be reduced in proportion to the suspension.
- f. *People vs. Martinez, Ventura* ((1998) 65 Cal. App 4th 1511; 77 Cal Rptr 2d 492) states that penalty assessments should be assessed on **all** fees and fines except as provided by statute (for example, restitution fines and restitution orders as provided in PC 1202.4(e) or WI 730.6(f)).

4. Failure to Pay Fine (PC 1205)

- a. Defendant is to be committed to custody until fine is satisfied.
- b. Imprisonment must not exceed one day for each \$30 of unpaid fine.
- c. Imprisonment may not extend beyond the term for which defendant could be sentenced to jail/prison for the offense.

F. RESTITUTION FINES (PC 1202.4)

1. Definitions

A mandatory monetary penalty imposed by the state on conviction of a misdemeanor/felony offense.

2. Fines collected are used to support the Victims of Crime Program.

3. Amount of fine is set at the discretion of the court and is to be commensurate with the seriousness of the crime.

- a. Felonies - minimum of \$200 and maximum of \$10,000
- b. Misdemeanors - minimum of \$100 and maximum of \$1,000

4. Penalty assessments cannot be added to the amount of a restitution fine.

5. Parole Fine (PC 1202.45)

- a. All persons sentenced to state prison may be assessed an additional restitution fine equal to the amount assessed pursuant to PC 1202.4(b).
- b. Fine is suspended pending successful completion of parole. Fine becomes due if parole is violated.
- c. Fine is a Lifetime Order (PC 1214)
- d. Fine can be paid several years after imposition of sentence.
- e. Fine is not subject to penalty assessments under PC 1464.

G. VICTIM RESTITUTION (PC 1202.4(F))

1. Definitions

- a. Defendant may be ordered to reimburse the victim for any losses suffered as a result of the crime.
- b. Amount of restitution will be an amount determined by the prosecuting attorney with the assistance of the victim or a Victim/Witness Program or the Probation Department.

2. Some losses may not be known at time of sentencing (i.e., ongoing medical treatment).

- a. Court can order restitution in “an amount to be determined.”
 - 1) This reserves jurisdiction of the issue of restitution and places the defendant on notice that restitution will be ordered.
 - 2) A future hearing date should be set to determine the amount.

Hearing may settle any part of the restitution order disputed by the defendant.

3. Penalty assessments cannot be added to a restitution order.

4. Information that Should be Identified in Restitution Order.

- a. Each victim to be paid.
- b. The amount of restitution to be paid to each victim.
- c. The date of loss (either the date of the crime or the date the restitution order is made).
- d. A provision for collection of interest at the legal rate (10% per annum) from the date of the loss to the date paid in full.

5. Collection of Restitution

- a. Restitution may be collected as a civil judgment (PC 1214)
- b. Victim may claim attorney’s fees and costs accrued in the collection process.
- c. Restitution order has an infinite life (no expiration date.)
- d. Restitution will be paid to the victim if the victim has not received assistance thru the Restitution Fund.
- e. Restitution will be paid to the Restitution Fund if the victim has received assistance thru the Fund.

6. Defendant's Financial Disclosure (PC 1202.4(f)(4))

- a. Defendant must prepare a financial disclosure that identifies assets, income & liabilities the defendant held or controlled a present or future interest in as of the date of the defendant's arrest for the crime for which restitution may be ordered.
- b. The defendant, on the approved Judicial Council form, shall sign disclosure.
- c. Disclosure shall be available to the victim.
- d. Disclosure is not required if the defendant has completed a financial statement pursuant to PC 987.
- e. The Defendant shall complete an updated Financial Disclosure if the defendant has any remaining unpaid balance on restitution order or fine 120 days prior to his or her scheduled release from probation or 120 days prior to his or her completion of a conditional sentence. (PC 1202.4(f)(11)).

7. Confidentiality of the PC 987 statement shall be deemed waived.

- a. Financial affidavit shall serve in lieu of the financial disclosure required under PC 1202.4(f)(4).
- b. Financial disclosure required under PC 1202.4(f)(4) is to be filed with the clerk no later than the date set for sentencing unless otherwise directed by the court.

8. Inspection and copying of the disclosure may be done as provided by PC 1203.05(b), (c), or (d).

Insert ORDER FOR RESTITUTION

Insert REST ORDER PAGE 2

INSERT DEFT STATEMENT OF ASSETS

INSERT PG 2 STATEMENT OF ASSETS

H. STATE PRISON SENTENCING

1. Definition

- a. Defendant is committed to the state prison for a time specified by law.
- b. There are two types of prison sentences - determinate and indeterminate.

2. **Time imposed** - the number of years/months imposed on each convicted count and enhancement.

3. **Total fixed term** - the sum of the consecutive terms imposed.

4. Determinate Sentence

- a. Defendant is committed to state prison for a finite period of time.
- b. Each felony offense has a specific sentencing range (low, middle, upper) and length of punishment set forth in the affected statute.
- c. Court must select the middle term unless it finds circumstances in mitigation or aggravation.
 - 1) Mitigation - facts which justify the imposition of the lower of three authorized prison terms or facts which justify the court in declining to impose an enhancement when the court has discretion not to impose it. (CRC Rule 405(e))
 - 2) Aggravation - facts which justify the imposition of the upper prison term. (CRC Rule 405(d))
 - 3) Court must state its reasons for selecting a term other than the middle term. (CRC Rule 406(b)(4))

5. Indeterminate Sentence

- a. Defendant is committed to state prison for an indefinite period of time.
- b. Certain crimes authorize an indeterminate sentence (murder, aggravated kidnapping, etc.)

- c. Sample indeterminate sentences:
 - 1) 15/20/25 years to life
 - 2) Life with or without the possibility of parole
- d. A defendant sentenced to both a determinate and indeterminate sentence in state prison will serve all determinate time first, then the indeterminate time. (PC 669)

6. Counts

- a. The individual charge(s) the defendant was found guilty, either by plea, verdict or court finding.
- b. A sentence must be imposed, stayed, or stricken on each convicted count.

7. Enhancements (Allegations)

- a. Allegation(s) found true that will add (enhance) the time imposed on each convicted count (i.e. use of a firearm in the commission of the crime, causing great bodily injury, the age of the victim, possessing a specific quantity of a controlled substance).
- b. Special circumstances proved true will warrant the death penalty or life imprisonment without the possibility of parole.

8. Priors

- a. Allegations found true that are tied to the defendant based on the defendant's prior criminal history. These allegations may include prior prison sentences.
- b. See Section II - Accusatory Pleadings and Their Components for further descriptions of the types of priors.

9. Multiple Counts (PC 1170.1)

- a. Principal term - the count with the greatest term of imprisonment imposed including any term imposed for applicable enhancements.
- b. Subordinate term - any remaining convicted counts and their enhancements.
 - 1) Court must determine the sentence relationship between the principal term and all subordinate terms.

10. Concurrent Term

- a. A sentence to be served at the same time as a principal term. All concurrent sentences must have a full term imposed.
- b. Prison terms not designated as consecutive or concurrent shall be deemed concurrent. (PC 669)

11. Consecutive Term

- a. A sentence to be served immediately following the first sentence.
- b. Consecutive sentences may be full term as designated by statute.
- c. Other consecutive sentences will usually be one-third the middle term for each subordinate count, excluding enhancements. (PC 1170.1(a))

12. Multiple Cases

- a. The court must designate a sentence relationship between convictions in different proceedings (whether they are from the same court or not.)
- b. The same rules for designating sentence relationships between multiple counts apply to multiple cases.

13. Stayed/Stricken

- a. Stay - The court will impose a sentence for a particular crime and then suspend that sentence in certain instances. The minutes must clearly reflect every count or enhancement which has been stayed and under what authority. (PC 654, PC 1170.1(g), PC 1170.1(a))
- b. Stricken - Punishment may not be imposed on certain enhancements if the court determines that there are circumstances in mitigation of the additional punishment. (PC 1385)

14. Other Prison Commitments

- a. Recall of sentence under PC 1170(d)
 - 1) Defendant is sentenced to prison.
 - 2) Court will request a diagnostic evaluation.
 - 3) Court retains jurisdiction for 120 days to recall the commitment and re-sentence the defendant based on information in a written evaluation report prepared by California Department of Corrections (CDC).
 - 4) An amended state prison abstract must be prepared to reflect the new sentence.

b. CYA Commitment (WI 1731.5(a))

- 1) A specific prison term is not imposed and defendant is committed to the California Youth Authority for the indeterminate term “prescribed by law.”
- 2) CYA will determine the length of time defendant will remain under their jurisdiction.

c. Sentenced to prison, housed at CYA (WI 1731.5(c))

- 1) Defendant must be under the age of 18 when sentence pronounced.
- 2) A prison sentence is imposed.
- 3) The prison term cannot exceed the defendant’s 18th birthday unless it will be completed by their 21st birthday.
- 4) Court will recommend that defendant be housed at CYA pursuant to WI 1731.5(c) if accepted.

If defendant is not accepted for housing, they shall return to court for re-sentencing.

- 5) Defendant, if accepted, will be housed at CYA until any of the following occur: (WI 1731.5(c)(1))
 - a) The Director CYA orders the defendant transferred to the Department of Corrections to complete the remainder of the sentence.
 - b) The Board of Prison Terms discharges the defendant.
 - c) The defendant reaches the age of 18 unless the period of incarceration would be completed on or before the 21st birthday.

d. Committed to CYA subject to recall under WI 1737

- 1) Defendant is committed to CYA.
- 2) Court will request a diagnostic evaluation.
- 3) Court retains jurisdiction for 120 days to recall the commitment and re-sentence the defendant based on information in a written evaluation report prepared by CYA.

15. Documents Needed for “Prison Packet” (PC 1203.01)

- a. Once defendants have been sentenced to state prison, they are usually taken into custody and remanded to the custody of the Sheriff for transportation to a Department of Corrections Reception Center assigned to your county.
- b. Certain court documents must be prepared to advise the Sheriff of the defendant’s sentence and facilitate the sheriff’s execution of that order. These documents also advise the Department of Corrections of the court’s sentence for this particular defendant. Collectively, these documents are usually known as the “prison packet” and may include the following:
 - 1) Copy of state prison abstract (with original signature and court seal).
 - 2) Certified copy of most current charging document (complaint, information, indictment).
 - 3) Certified copy of sentencing minute order with copy of Fingerprint Card attached.
 - 4) Copy of probation officer’s report.
 - 5) Certified copies of other documents as needed.
 - 6) Statements in aggravation or mitigation, medical reports, etc if ordered.
 - 7) Copy of sentencing transcript, if available
 - 8) Certified copy of child visitation order, sealed
- c. The prison packet will be delivered by following local procedures to the Sheriff.
- d. The Sheriff’s Office will deliver the prison packet and the defendant to the Department of Corrections reception center.

INSERT FIXED TERM WORKSHEET

FIXED TERM PG 2

FIXED TERM PG 4 ENHANCEMENTS

FIXED TERM ENHANCEMENTS PG 2

FIXED TERM ENHANCEMENTS PG 3

VI. SPECIALTY COURTS

A. DEFERRED ENTRY OF JUDGMENT (PC 1000 ET. SEQ.)

1. Eligibility

- a. Defendant must enter a guilty plea before entering diversion.
- b. Sentence is deferred pending completion of the program.
 - 1) Successful completion of program:
 - a) Guilty plea is withdrawn
 - b) Charges are dismissed
 - 2) Unsuccessful completion of program:
 - a) Defendant is not entitled to trial
 - b) Defendant proceeds immediately to sentencing on plea taken earlier in the case.

2. Qualifying Criteria

- a. District Attorney reviews file/criminal record for the following:
 - 1) No prior convictions for offenses involving controlled substances.
 - 2) Offense charged does not involve a crime of violence or threatened violence.
 - 3) No evidence of a violation relating to narcotics or restricted drugs.
 - 4) Defendant's record does not indicate that probation or parole has ever been revoked without being completed.
 - 5) No prior felony convictions within 5 years.
- b. District Attorney discloses the results of the review to court and counsel at the earliest possible date.
- c. Sole remedy for defendant found ineligible for deferred entry of judgment is a post conviction appeal.

3. Plea to charges

- a. Plea must be guilty; “no contest” or nolo contendere plea is not allowed.
- b. Plea is “as charged.”
- c. Defendant must waive right to speedy sentencing.
- d. Defendant must be advised of the maximum sentence that could be imposed if he/she fails the program.
 - 1) Court has sentencing discretion.
- e. Defendant’s custody status.
 - 1) Bail is exonerated. (PC 1000.2)
 - 2) Defendant shall be released from custody upon being accepted into the program.
- f. Plea is not counted as a conviction for statistical purposes at this time.

4. Monitoring the Defendant

- a. Court may set hearings as deemed necessary to verify proof of enrollment or completion of program.
- b. Program must be at least 18 months and no more than 3 years from time of referral.

5. Failure to Successfully Complete the Program (PC 1000.3)

- a. Criteria for failing the program:
 - 1) Defendant performed unsatisfactorily in the program.
 - 2) Defendant not benefiting from the education.
 - 3) Defendant becomes convicted of a misdemeanor that reflects his/her propensity for violence.
 - 4) Defendant becomes convicted of a felony.
 - 5) Defendant has engaged in criminal conduct that makes him/her unsuitable for the program.

b. Exclusion hearing set

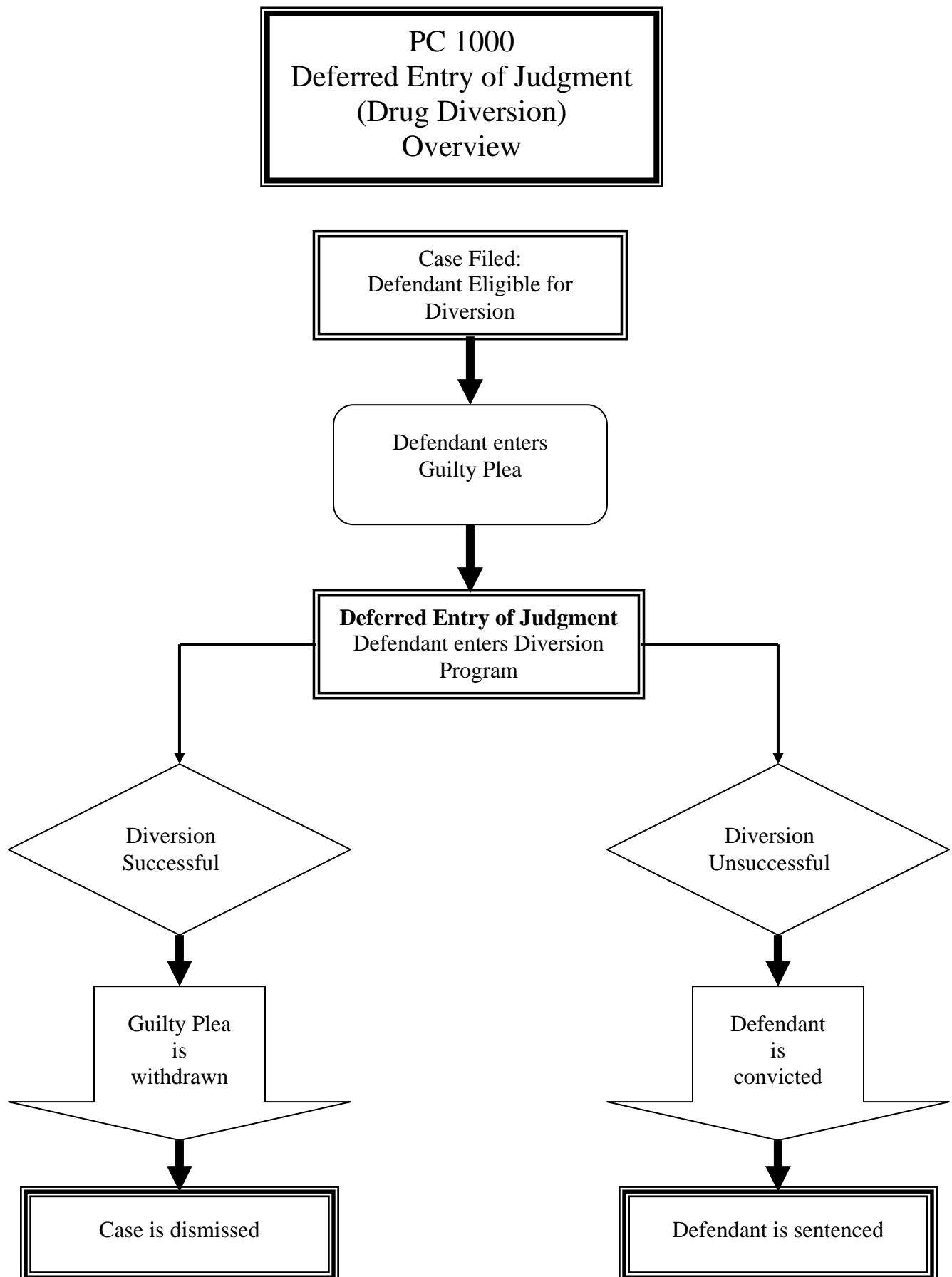
- 1) Defendant is notified to appear before the court or a bench warrant is issued.
- 2) If the court finds any of the above allegations to be true:
 - a) The defendant shall be excluded from the program.
 - b) Court renders a finding of guilt to the charge(s) as previously pled and enters judgment.
 - c) Set for sentencing hearing or defendant may waive time and request immediate sentencing.

c. Sentencing Hearing - Defendant may be sentenced to any term.

- d. Defendant may not withdraw plea based on the fact he/she is now excluded from the drug program.

6. Successful Completion of Program (PC 1000.4)

- a. Guilty plea to all charges is withdrawn.
- b. Pending criminal charges are dismissed.
- c. Arrest is deemed to have never occurred.
 - 1) Defendant may indicate he/she was never arrested or granted deferred entry of judgment unless applying for a position as a peace officer.
 - 2) Department of Justice will disclose the arrest and disposition in response to any peace officer application request.



B. Drug Court

1. Focus of Drug Court

- a. Help get moderately to severely addicted offenders off drugs and into immediate treatment.
 - 1) Initiated after a significant triggering event (arrest).
 - 2) Help the participant achieve sobriety and self-reliance in the community.
- b. The criminal prosecution track will deviate from the normal and will vary from court to court.
 - 1) May suspend criminal proceedings and initiate drug court treatment.
 - 2) May require the participant to enter guilty plea; the court will suspend imposition of a sentence and place the defendant on three years probation with drug court conditions.

2. The Drug Court Team

- a. Judge conducts judicial supervision of the participant by frequent court appearances and review of progress reports.
- b. Defense counsel and prosecuting attorney are in “non-adversarial” roles by promoting the participant’s success with a common goal toward the participant’s graduation from the program.
- c. Probation officer and health care professional act as the treatment team that provides supervision and treatment services (probation supervision and treatment services may vary from court to court).

3. General Procedures

- a. Each drug court will set up its own eligibility standards for participants and determine at what level they will operate.
- b. Prosecuting attorney provides early identification and advises the court of eligible defendants.
- c. Defendant is advised of nature of the program and the consequences of failing to comply.

- d. Probation department, intake services or some other similar agency screens defendant for eligibility.
- e. Defendant will also be screened for suitability issues (dual diagnosis, behavior problems, etc.) by treatment personnel.
- f. Conviction and sentence of the defendant varies by court.
- g. Defendant may enter a drug treatment program before a plea has been entered.
- h. Defendant may be asked to enter a guilty plea with sentence suspended similar to the drug diversion program.
- i. Defendant may enter guilty plea, be sentenced, and have imposition of the sentence suspended.
- j. Defendant will enter the Drug Court Program.
 - 1) Local court may have a 14 day opt out or kick out policy that allows the defendant to withdraw his/her plea.
 - 2) This policy allows the defendant time to determine if he feels he can meet the standards of the program, or
 - 3) Allows the treatment provider to make further determination of defendant's suitability for the program.
 - 4) Criminal proceedings will be reinstated and the case will proceed with the prosecution track should the defendant leave the treatment program at this stage.

4. Drug Program Treatment

- a. Length of time in the program will vary; minimum time may be one year but is usually 4-16 months.
- b. Treatment may be from a state licensed and approved drug treatment facility (some go into a residential setting).
- c. Individual and group counseling is provided and participants will be in twelve step programs (this is especially true in most outpatient treatment).
- d. Pay costs of program/administrative fees as well as costs of probation and health care fees.
- e. Sanctions and rewards as appropriate will be used to facilitate compliance with program treatment.

5. Defendant Progress Review

a. Court Review Hearings

- 1) Ongoing and frequent judicial supervision.
- 2) Frequency of hearings will vary by court.
- 3) Tone of hearings may be congratulatory or chiding depending on defendant's progress (much judicial "cheerleading" and support from drug court team to participant).

b. Random and frequent drug testing (results are confidential).

c. Written progress reports (confidential).

6. Compliance with the Drug Treatment Program

a. May include incentives for success.

b. May include sanctions against defendant for violations.

7. Graduation and Termination from Drug Program

a. Successful

- 1) Criminal proceedings will vary by court.
- 2) Certificate of completion is awarded.
- 3) Lots of fanfare: applause, reception, congratulations

b. Unsuccessful

Criminal proceedings will vary by court.

Ten Key Components of a Drug Court*

- Key Component #1:** Drug courts integrate alcohol and other drug treatment services with justice system case processing.
- Key Component #2:** Using a non-adversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process rights.
- Key Component #3:** Eligible participants are identified early and promptly placed in the drug court program.
- Key Component #4:** Drug courts provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services.
- Key Component #5:** Abstinence is monitored by frequent alcohol and other drug testing.
- Key Component #6:** A coordinated strategy governs drug court responses to participants' compliance.
- Key Component #7:** Ongoing judicial interaction with each drug court participant is essential.
- Key Component #8:** Monitoring and evaluation measure the achievement of program goals and gauge effectiveness.
- Key Component #9:** Continuing interdisciplinary education promotes effective drug court planning, implementation, and operations.
- Key Component #10:** Forging partnerships among drug courts, public agencies, and community-based organizations generates local support and enhances drug court effectiveness.

**Reprinted from "defining Drug Courts:The Key Components", published January, 1997, by The National Association of Drug Court Professionals and the Drug Court Standards Committee in conjunction with the U.S. Department of Justice, Office of Justice Programs, Drug Courts Program Office.*

C. Penal Code Section 1210.1 – Proposition 36

1. Background

On November 7, 2000, California voters passed Proposition 36: the substance abuse and crime prevention act of 2000. Proposition 36 requires all offenders convicted of non-violent drug possession offenses, existing County Probationers and State Parolees who commit offenses within the provisions of section 1210.1 of the penal code to be referred to treatment rather than being sentenced to state prison or local custody.

2. Introduction

“Notwithstanding any other provision of law, and except as provided in subdivision (b), any person convicted of a nonviolent drug possession offense shall receive probation.” PC1210.1(a)

- a. As a condition of probation the court shall require participation in and completion of an appropriate drug treatment program.
 - 1) The court may also impose participation in vocational training
 - 2) A court may not impose incarceration as an additional condition of probation.
 - 3) In addition to any fine assessed under other provisions of law, the trial judge may require any person convicted of a nonviolent drug possession offense who is reasonably able to do so to contribute to the cost of his or her own placement in a drug treatment program.

3. Eligibility Requirements

- a. Proposition 36 mandates treatment for all eligible offenders after July 1, 2001. Proposition 36 would generally apply to three types of people:
 - 1) Those convicted of a non-violent drug possession offense.
 - a) A “non-violent” drug possession offense is defined as the possession, use or transportation for personal use of any controlled substance, or the offense of being under the influence of a controlled substance in violation of Health and Safety Code Section 11550. It does not include possession for sale, production, or manufacturing of any controlled substance.

- b) Defendants with new convictions for drug offenses qualify for treatment provided that they are not convicted of sales or manufacture or any non-drug crimes at the same time.
 - c) Offenders are excluded if they have a prior conviction for serious or violent felony (“strikes”), unless they have served their prison time and have been out of prison for a period of five years with no felony convictions or misdemeanor convictions involving the treat of violence.
- 2) Person on probation for drug possession or being under the influence offenses. (PC 1210.1(e)(3)(D).
- a) Defendants previously convicted of a Proposition 36 qualifying drug offense, may become eligible for treatment under the Proposition 36 guidelines in the event he or she violates a condition of probation deemed to be “drug-related” within the guidelines of Penal Code Section 1210.1.
 - b) It is the courts discretion to revoke or modify probation, which could include participation in a drug treatment program.
- 3) Persons on parole with no prior convictions for a serious or violent felony.
- a) After July 1, 2001, a person on parole who commits a non-violent drug possession offense or who violates a drug related condition of parole may be eligible for treatment in the community, instead of returning to prison.
 - b) To qualify, the parolee must have no prior convictions at any time for a serious or violent felony.
 - c) Parole authorities, rather than the courts, will set monitoring conditions for these parole violators, and will punish violations of the treatment program.
 - d) The parole authority must impose, as a condition of parole, participation in and completion of an appropriate drug treatment program.

4. Excluding Factors – Penal Code Section 1210.1(b)(1)

- a. Any defendant who previously has been convicted of one or more serious or violent felonies in violation of subdivision (c) of Section 667.5 or Section 1192.7 unless the nonviolent drug possession offense occurred after a period of five years in which the defendant remained free of both prison custody and the commission of an offense that results in (A) a felony conviction other than a nonviolent drug possession offense, or (B) a misdemeanor conviction involving physical injury or the threat of physical injury to another person.
- b. Any defendant who, in addition to one or more nonviolent drug possession offenses, has been convicted in the same proceeding of a misdemeanor not related to the use of drugs or any felony.
- c. Any defendant who:
 - 1) While using a firearm, unlawfully possesses any amount of:
 - a) A substance containing either cocaine base, cocaine, heroine, methamphetamine;
 - b) A liquid, non-liquid, plant substance, or hand rolled cigarette, containing PCP.
 - 2) While using a firearm, is unlawfully under the influence of cocaine, heroine, methamphetamine or PCP.
 - 3) Refuses drug treatment as a condition of probation.
 - 4) Has two separate convictions for nonviolent drug possession offenses.
 - 5) Has participated in two separate courses of drug treatment pursuant to subdivision (a).
 - 6) And is found by the court, to be not amenable to any and all forms of available drug treatment. Notwithstanding any other provision of law, the trial court shall sentence such defendants to 30 days in jail.
 - 7) Is also charged with and convicted of a “misdemeanor not related to the use of drugs” in the same proceedings as a nonviolent drug possession offense. (PC 1210.1(b)(2). Simple possession or use of drugs or drug paraphernalia.

5. Refusal of Treatment

In the event the defendant is eligible for sentencing pursuant to the guidelines of PC 1210.1 and refuses treatment, the case will continue with the normal felony process.

6. Referral for Service

- a. The probation department shall notify the drug treatment provider designated to provide drug treatment within seven days of an order of probation.
- b. Within 30 days of receiving that notice, the treatment provider shall prepare a treatment plan and forward it to the probation department.
- c. Progress reports shall be prepared quarterly.

7. Violation of Probation

- a. The defendant may change treatment providers at any time if it is determined that he/she might be better suited for a different program.
- b. At any point during the drug treatment the treatment provider may notify the probation department that the defendant is not amenable to any type of drug treatment and the probation department may move to revoke probation.
- c. If probation is revoked pursuant to the provisions PC 1210.1(e) the defendant may be incarcerated pursuant to otherwise applicable law without regard to the provisions of this section.
- d. If a defendant received probation under subdivision PC 1210.1(a), and for the third time, violates that probation either by being arrested for a nonviolent drug possession offense, or by violating a drug-related condition of probation, the court shall conduct a hearing to determine whether probation shall be revoked. If the alleged probation violation is proved, the defendant is not eligible for continued probation. (PC 1210.1(e)(3)(C)).

8. Termination of Treatment Program – Probation Revoked

- a. In the event probation is revoked and the defendant is terminated from the treatment program, he/she may be incarcerated.
- b. When the court makes the finding that the defendant is in violation of probation, he/she will be sentenced without regard to the guidelines set forth in PC 1210.1.

9. Completion of Treatment – PC 1210.1(d)(1)

- a. At any time after completion of drug treatment, a defendant may petition the sentencing court for dismissal of the charges.
- b. The court will find that the defendant has successfully completed drug treatment, and substantially complied with the conditions of probation and the conviction on which the probation was based shall be set aside and charges dismissed.
 - 1) In addition, the arrest on which the conviction was based shall be deemed never to have occurred and the defendant shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she has been convicted.
 - 2) The defendant may indicate in response to a question concerning his or her prior criminal record that he or she was not arrested or convicted of the offense.
 - 3) Records pertaining to the arrest or conviction under this section may not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license or certificate.
 - 4) The arrest and conviction are recorded by the Department of Justice.
 - 5) Defendant must disclose this information if applying for a position as a peace officer, applying for public office, licensing for any state or local agency, contracting with the State Lottery or serving on a jury.

Exception: Dismissal of an indictment or information pursuant to PC 1210.1(d)(1) does not permit a person to own, possess, or have in his or her custody or control any firearm capable of being concealed upon the person or prevent his or her conviction under Section 12021. (PC 1210.1(d)(2))

D. CRIMINAL DOMESTIC VIOLENCE/PROTECTIVE ORDERS

1. Definition

- a. Abuse – Intentional or reckless, causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to himself, herself, or another.
- b. Domestic Violence – Abuse committed against an adult or fully emancipated minor. Relationship to abuser is one of the following:
 - 1) Souse
 - 2) Former Spouse
 - 3) Co-habitant – two unrelated adults living together for a substantial period of time, resulting in some permanency of relationship. Factors include:
 - a) Sexual relations
 - b) Sharing income or expenses
 - c) Joint use or ownership of property
 - d) Whether the parties themselves act as husband and wife
 - e) Continuity of the relationship
 - f) Length of the relationship
 - g) Former co-habitant
 - h) Person with whom suspect has had a child
 - i) Person with whom suspect is having or has had a dating or engagement relationship

2. Qualifying Criteria for a Protective Order

- a. Upon good cause belief that harm to, or intimidation or dissuasion of a victim or witness has occurred or is reasonably likely to occur, any court with jurisdiction over a criminal matter may issue a protective order.
- b. In all cases where the defendant is charged with a crime of domestic violence, as defined in Section 13700 of the Penal Code, the court shall consider issuing the protective order in its own motion.
- c. All interested parties shall receive a copy of the order.

- d. In cases in which a complaint, information, or indictment charging a crime of domestic violence has been issued, a restraining order or protective order against the defendant may be issued by the criminal court has precedence over any other outstanding court order against the defendant.

3. Marking the Court File

In order to facilitate the issuance of these orders, the court's records of all criminal cases involving domestic violence shall be marked to clearly alert the court to this issue. (PC 136.2(h)(1))

4. The Protective Order

- a. In all cases where the defendant is charged with a crime of domestic violence, as defined in Section 13700, the court shall consider issuing the above described orders on its own motion. All interested parties shall receive a copy of those orders. (PC 136.2(h)(1))
- b. The order should be completed by the clerk and distributed as follows:
 - 1) Original to court file
 - 2) One copy to each protected person
 - 3) One copy to the Defendant
 - 4) One copy to the prosecutor
 - 5) One copy to law enforcement to be entered into CLETS within one (1) business day pursuant to FC 6380(a) (PC 136.2(g))
- c. The protective order is in effect for three years from the date of issuance or until the date indicated in Section 7 of the Order.
- d. Proof of Service.
 - 1) If possible, the defendant may be served in open court and no additional proof of service is required.
 - 2) If defendant is not present in open court or it is not possible to serve him/her at that time, the clerk should mail a copy of the protective order to the defendant.
 - 3) The name and address of the protected person(s) may be obtained from the prosecutor if not available in the court's file.

Insert Protective order form CR-160 Here

Insert Protective Order page 2 here

5. Modification of the Protective Order

- a. In the event the defendant or victim appears in court requesting that the order be modified, and that request is granted, the clerk shall complete an additional Protective Order checking the box, which indicates “Modification.”
- b. The Modified Order should be completed by the clerk and distributed as follows:
 - 1) Original to court file.
 - 2) One copy to each protected person.
 - 3) One copy to the defendant.
 - 4) One copy to the prosecutor.
- c. One copy to law enforcement to be entered into CLETS within one (1) business day pursuant to FC 6380(a) (PC 136.2(g)).

6. Termination of Protective Order

- a. Judicial Council form CR165 should be used to indicate that a Protective Order has been terminated prior to the previously indicated termination date.
- b. The Termination Order should be completed by the clerk and distributed as follows:
 - 1) Original to court file.
 - 2) One copy to each protected person.
 - 3) One copy to the defendant.
 - 4) One copy to the prosecutor.
- c. One copy to law enforcement to be entered into CLETS within one (1) business day pursuant to FC 6380(a) (PC 136.2(g))

Insert copy of CR 165 Here

VII. POST CONVICTION HEARINGS AND ORDERS

A. DISPOSITION OF ARREST AND COURT ACTION (JUS-8715)

1. Background

- a. Criminal justice agencies have a need for accurate and current criminal history information on each defendant.
- b. A Disposition of Arrest and Court Action form (JUS-8715) is used to report this information for each arrest and the disposition of that arrest to the California Department of Justice (DOJ).

2. Confidentiality of Criminal History Record

- a. Access to criminal history information is allowed to any public agency or person when needed in the course of their duties.
- b. “Any employee of the local criminal justice agency who knowingly furnishes a record or information obtained from a record to a person who is not authorized by law to receive the record or information is guilty of a misdemeanor.” (PC 13302)
- c. “Any person authorized by law to receive a record or information obtained from a record who knowingly furnishes the record or information to a person who is not authorized by law to receive the record or information is guilty of a misdemeanor.” (PC 13303)

3. Charges Reported

- a. All felonies
- b. Reportable misdemeanors as determined by the Department of Justice or by statute.

4. Information Reported

- a. PC 13125 lists all data elements to be reported in the criminal history information.
 - 1) Elements include:
 - a) Basic defendant identification
 - b) Offenses charged at arrest and in accusatory pleading
 - c) Type of disposition

- d) Sentence type/terms of sentence (including basic terms and conditions of probation).
- e) Any subsequent orders/modifications to the sentence or sealing of the record.

5. Reporting Court Disposition

- a. Law enforcement will forward fingerprint card information to the Department of Justice on those cases that are reportable.
- b. Court dispositions of these defendants must be reported within 30 days of disposition. (PC 13151).

6. Reporting Methods

- a. Manual hard copy forms (JUS-8715).
- b. Automation via magnetic tape.

7. Stages of Form Completion

- a. Law enforcement will complete section A at time of booking.
- b. Prosecutor will complete section B when a complaint is filed as a result of a prosecutor's investigation.
- c. Court will complete remainder of form indicating charges at disposition, type of disposition, sentence, admonishments/waivers and the clerk's certification.

Court must initiate the form if not done by law enforcement or prosecutor.

8. Distribution of Form

Completed forms are sent to:

- a. Department of Justice
- b. Federal Bureau of Investigation (via DOJ)
- c. Law enforcement agency that initiated the action

9. Subsequent Actions

Any modification, update, or change of a sentence must be reported.

- a. Probation changes.
- b. Sentence changes.
- c. Re-open case after proceedings suspended.
- d. Any set aside convictions, dismissed or sealed records must also be reported.
- e. PC 1203.4 and PC 1203.4a dismissals.
- f. WI 1772 CYA discharge.
- g. PC 851.8 record sealing.

10. Resource Information

- a. DOJ's Bureau of Criminal Identification has blank JUS-8715 forms and instruction manuals to complete the forms.

California Department of Justice
Bureau of Criminal Identification
Disposition update Section
P.O. Box 903417
Sacramento, CA. 94203-4170
Or telephone: (916) 739-5016

- b. Each county has a regional representative that handles questions, training, and problems.

Insert copy of JUS-8715

Insert copy of JUS-8715A

B. NOTIFICATION TO ELECTION DIVISION OF CONVICTION OF FELONY

1. Person generally entitled to vote (Elections Code 2101) include:

- a. any person who is a United States citizen,
- b. a resident of California,
- c. and at least 18 years of age.

2. However, persons not entitled to vote are those who:

- a. have been found not guilty by reason of insanity per PC 1026 (EC 2211(a))
- b. have been found incompetent to stand trial per PC 1370 (EC 2211(a) & 2211 (b))
- c. not currently in prison or on parole for having been convicted of a felony (EC 2101)

3. The court shall notify the elections official of commitment to a treatment facility or program and likewise release from that treatment facility or program. (EC 2211(c)).

4. The court shall furnish to the chief elections official information concerning persons convicted of a felony (EC 2212(b)).

- a. The information shall be submitted at least twice a year.
- b. The information shall be certified.
- c. The information shall include the full names, last known addresses and dates of birth of the defendants listed since the last report.

**C. POWER OF ATTORNEY FOR FIREARMS TRANSFER AND DISPOSAL
(PC 12021(D)(2))**

- 1. A provision to provide a criminal defendant who is legally prohibited from owning/possessing firearms with a notification form.**
- 2. Intent of the notification form is to ensure that persons who are prohibited from owning firearms are promptly notified to immediately transfer or dispose of any illegally owned or possessed firearms.**

Failure of prohibited persons to transfer or dispose of any and all firearms could result in criminal sanctions.

- 3. Pursuant to PC 12021(a)(b) and (c) persons who may not legally possess firearms are listed on pages 2 and 3 of the form.**

Insert Page 1 of that notice here

Insert page 5 of that notice here

D. Department of Motor Vehicles (DMV)

1. Background

- a. Courts are mandated to provide information actions restricting a person's right to drive or convictions to the Department of Motor Vehicles within ten days of court action. (VC 1803)
- b. This information advises the DMV of actions taken by the court on a defendant's privilege to drive.
- c. Administrative per se information
 - 1) The arresting officer is required to provide certain information to the DMV prior to the filing of charges with the court.
 - 2) DMV will take action against the driver's license even if no charges are filed.
- d. Reportable crimes
 - 1) Convictions for Vehicle Code violations
 - 2) Convictions for most Health and Safety Code violations beginning with "11000"
 - 3) Some Business and Professions Code violations
 - 4) Some Penal Code violations
 - 5) Any felony when a motor vehicle was used in the commission of the crime
- e. What information is to be reported
 - 1) Case/docket number
 - 2) Violation date
 - 3) Vehicle license number
 - 4) True name and any known aliases
 - 5) Address
 - 6) Driver's license number (or the index "X" number)
 - 7) Date of birth

- 8) Code section violated
 - 9) Conviction date
 - 10) Disposition of case/judgment
 - 11) Court restrictions/suspensions
 - 12) Probation term
 - 13) Blood alcohol level
 - 14) Conditions of DUI probation
 - 15) Court ID number
 - 16) Court identification and seal (if hard copy)
- f. How information is reported
- 1) All identifying information should be verified and reported exactly as it appears in the court records.
 - 2) All disposition information is translated into “codes” as defined by the DMV.
 - 3) The information is transferred to DMV by:
 - a) Hard copy abstract
 - b) Magnetic tape
 - c) On-line transmission
- g. Updates and changes
- 1) When the original information is no longer correct due to a modification of the disposition, the amendment must be reported to DMV.
 - 2) There are amended codes to flag these changes so that the driving record can be updated.
 - 3) When the original information was reported incorrectly, the court must notify DMV of this fact along with the correct information.

h. Information placed on the wrong person's record

- 1) If, by court or DMV error, information on violations or convictions is placed on the wrong record, the court must verify that it is indeed in error and notify the DMV.
- 2) Form DL-157 should be filled out by the court and forwarded to DMV.

i. Key DMV telephone numbers and addresses

- 1) Driver record interpretation and correction:
Consolidated Processing Area
P.O. Box 942890
Sacramento, CA. 94290-0001
(916) 657-6525
- 2) Driver Record Abstract Processing:

Court Liaison
P.O. Box 942890
Sacramento, CA. 94290-001
(916) 657-6592 – Private Number
- 3) Order forms (Regular orders must be made by mail; emergency orders may be by phone for a maximum of a 2 week supply)

Forms Management
P.O. Box 932382 Mail Station G202
Sacramento, CA. 942321-3820
(916) 657-7836

E. REPORTING REQUIREMENTS TO LICENSING AGENCIES

1. Medical Board

- a. Notice that charges have been filed against a person in who is licensed by the Medical Board of California
- b. Prosecutor must notify the Medical Board, Board of Podiatric Medicine, or any other allied health board, and the clerk of the court, of any charges filed against a licensee of that board. (BP 803.5(a))

Notice must be given immediately after the prosecuting attorney obtains information the defendant is a licensee.

- c. The clerk shall record prominently in the file that the defendant holds a license.
- d. After conviction, the clerk must send a certified copy of the record of conviction (minute order) to the appropriate board.
 - 1) Notice shall be sent within 48 hours of the conviction.
 - 2) If the licensee is regulated by an allied health board, the record of conviction should be sent to the allied health board and the Medical board. (BP 803.5(b))
- e. Preliminary hearing transcripts (BP 803.6)
 - 1) A copy of the preliminary hearing transcript shall be sent to the Medical Board and allied health board, or Board of Podiatric Medicine if the transcript is less than 800 pages.
 - 2) The clerk shall notify the appropriate board(s) if the transcript is in excess 800 pages.
- f. Notice of conviction (BP)
 - 1) The clerk of the court must notify the Board of Behavioral Science Examiners or any agency mentioned in BP 800(a) that any person holding a license, certificate, or similar authority has committed a crime.
 - 2) Report shall be made within ten days of conviction.
 - 3) Report may be made on a form provided by the Medical Board.

Insert Reporting requirements memorandum here

Insert reporting form here

Insert 2nd page of reporting form here.

2. BOARD OF ACCOUNTANCY (BP 5063.1)

Within 10 days of entry of a conviction for any of the following, the Court shall report to the California Board of Accountancy and provide a copy of said conviction or judgment and any orders or opinions of the court accompanying or ordering the conviction or judgment;

- a. A felony.
- b. Any crime related to the qualifications, functions or duties of a public accountant or certified public accountant or to acts or activities in the course and scope of the practice of public accountancy.
- c. Any crime involving theft, embezzlement, misappropriation of funds, breach of fiduciary responsibility or the preparation, publication or dissemination of false, fraudulent or materially misleading financial statements, reports or information.

A conviction includes the initial plea, verdict or finding of guilt, pleas of no contest, or pronouncement of sentence by a trial court even though that conviction may not be final until appeals are exhausted.

Insert Reportable events form here

3. STATE BAR (BP 6101)

a. Notice that charges have been filed against a licensed attorney.

Prosecutor must notify the Office of the State Bar of California and the clerk of the court of the pendency of an action against an attorney. (BP 6101(b))

b. The clerk shall record prominently in the file that the defendant is an attorney.

c. After conviction, the clerk must send a certified copy of the record of conviction (minute order) to the Office of the State Bar.

Notice shall be sent within 48 hours of conviction.

d. State Bar transmits records of convictions involving moral turpitude to the Supreme Court for further proceedings.

F. CHILD VICTIM VISITATION RESTRICTIONS (PC 1202.05)

- 1. Conviction must be for violating Penal Code Sections 261, 264.1, 266c, 285, 286, 288, 288a, 288.5, or 289.**
- 2. The defendant has received a state prison sentence.**
- 3. Victim is child under the age of 18 years; the court shall prohibit all visitations between the defendant and the child victim.**
- 4. The Juvenile Court may find that visitation between the defendant and the child would be in the best interest of the child and allow visitation pursuant to WI 362.6.**
- 5. An order denying any visitation between the defendant and the child victim while defendant is in prison should be prepared.**
 - a. The order should show the defendant's full name, case number, Department of Corrections identification number or date of birth and charges at time of conviction.
 - b. The order should contain the victim's name, date of birth, parent/guardian and address.
 - c. Copies are to be provided to the Department of Corrections (in prison packet) and parent or guardian of child.

Insert order prohibiting visitation

G. REPORTING PC 1202.1 TEST RESULTS

1. Persons convicted of certain sex crimes must submit to a blood test for acquired immune deficiency syndrome (AIDS).

- a. PC 261 – Rape
- b. PC 261.5 – Unlawful sexual intercourse with minor
- c. PC 286 – sodomy
- d. PC 288a – oral copulation
- e. PC 262 – spousal rape
- f. PC 288 – lewd or lascivious acts (if specifically court ordered)

The charges at conviction may include subsections of the above.

2. Test results are forwarded to the Department of Justice to update the defendant's criminal history. (Rap Sheet)

- a. Rap sheet will show a positive test result and that the defendant has been advised of the test results.
- b. Defendant's next arrest on similar charges may result in enhancements being added for committing the crimes while knowingly being infected with the virus. (VC 12022.85)

3. The clerk of the court shall forward test results to the Department of Justice by using form JUS-360.

- a. Relevant information can be found on JUS-8715 or in case file.
- b. Only convicted charges are reported.
- c. Must include lab slip number, test results (positive or negative), and indicate if the defendant was informed of the results.

4. Test results are confidential and should be sealed and placed in a confidential envelope.

Insert Test results form

H. ORDERS FOR DNA TESTING

1. The DNA database and data bank (PC 295)

- a. The purpose of the DNA and forensic identification data bank is to assist federal, state, and local criminal justice and law enforcement agencies within and outside California with the expeditious detection and prosecution of individuals responsible for sex offenses and other violent crimes, the exclusion of suspects who are being investigated for these crimes, and the identification of missing and unidentified persons, particularly abducted children. (PC 295 (c))
- b. The California Department of Justice shall be responsible for the management and administration of the State's DNA database and will work in conjunction with the Federal Bureau of Investigation.

2. Any person, including any juvenile, who is convicted of or pleads guilty or no contest to any felony offense, or is found not guilty by reason of insanity of any felony offense, or any juvenile who is adjudicated under Section 602 of the Welfare and Institutions Code for committing any felony offense.

3. The requirement to provide samples also extends to defendants who have previously been convicted of any of these offenses, regardless of the date of the prior conviction.

4. The provisions of this chapter are mandatory and apply whether or not the Court advises a person, including any juvenile, that he or she must provide the databank and database specimens, samples and print impressions. (PC 296(c))

5. The Court Order

- a. The clerk's minutes should reflect the Court's order to the defendant to provide the samples and prints.
- b. The clerk must notify the proper agency to perform the test by way of a copy of minutes, a court order or an abstract of judgment.

6. Inmates who are in custody shall provide the required samples and prints at the county jail or a designated facility.

7. If the defendant is not in custody, the Court shall order the person to report within five calendar days to the county jail, or other designated facility to provide the samples and prints.

I. RETURN AFTER APPEAL

1. Definitions

- a. Opinion (CRC 24) The reviewing court's decision on the appeal.
- b. Remittitur (CRC 25) A certificate remitting the case back to the lower court; returns jurisdiction of the case to the lower court. (PC 1265)

2. Filing

- a. Reviewing court generally issues the Remittitur 65 days after the filing of the Opinion.
- b. Certified copies of the Opinion and Remittitur are sent by the reviewing court to the lower court for judicial review and subsequent filing in their court files.

3. Remittitur will have one of three rulings (PC 1260)

- a. Affirmed The reviewing court agrees with the outcome of the lower court and the lower court action stands.
- b. Modified The reviewing court agrees with the basic premise of the lower court decision but orders the lower court to modify its ruling (i.e., the conviction stands but the reviewing court orders the trial court to modify the sentence.)
- c. **Reversed** The reviewing court finds the lower court's decision is in error and overturns it; the lower court must then "start over."
 - 1) Remittitur may also have a combination of the above. (Affirmed in part or reversed in part).
 - 2) The court reviews the Remittitur and determines what, if any, action is to be taken.
 - 3) A hearing may need to be set if the decision was modified or reversed.
 - a) DA may request hearing
 - b) Hearing may be set on Court's own motion
 - c) CDC or CYA may request a hearing

4. Clerk gives notice to appropriate parties

- a. Determine if defendant needs to be present.
- b. Prepare transportation orders if necessary.

5. At the hearing the Court will make the appropriate orders as directed by revealing court.

- a. Defendant re-sentenced
 - 1) Clerk prepares amended DMV and state prison abstracts as needed. Documents are forwarded to appropriate state agency.
 - 2) DOJ must be notified of sentence change by substance action JUS 8715.
- b. Defendant out on bail pending appeal
 - 1) Defendant will be sentenced
 - 2) Bail on appeal, if posted, will be exonerated
 - 3) Defendant will be surrendered for execution of sentence if sentence included incarceration.
- c. Outcome reversed
 - 1) Full reversal is deemed an order for new trial unless otherwise directed. (PC 1262)
 - 2) New trial date is set.
 - 3) Defendant is removed from State Prison and will be remanded to the custody of the local Sheriff.
 - 4) Case proceeds as if previous decisions do not exist.
 - 5) Defendant may be discharged and the case ordered dismissed. (PC 1262)

J. PETITION TO REDUCE FELONY TO MISDEMEANOR (PC 17(b)(3))

If a defendant was convicted of a felony and the defendant was subsequently placed on probation, he or she may petition the court pursuant to Penal Code section 17(b)(3) for reduction of the felony to a misdemeanor, in addition to a petition submitted pursuant to Penal Code section 1203.4.

- At the time of the hearing, the court may grant or deny the petition.
- If the court grants the petition, the Department of Justice is to be notified.

K. MOTIONS TO DISMISS PURSUANT TO 1203.4

- 1. Defendant files this motion with the court or with the probation department.**
- 2. Filed motion required 15 days notice to the District Attorney.**
- 3. Defendant qualifies for this relief:**
 - a. After completion of entire probationary period.
 - b. After being terminated from probation.
 - c. When the Court determines that the defendant should be granted this relief.
- 4. Conviction is set aside**
 - a. Guilty or Nolo Contendere plea.
 - b. Verdict of guilty whether by court or jury.
- 5. A not guilty plea is then entered.**
- 6. The court shall then dismiss the accusation or information.**
- 7. The defendant is then released from all “penalties and disabilities” that resulted from the conviction.**
 - a. When asked as to whether they have suffered any felony or misdemeanor convictions, the defendant may state “No”, except under the following conditions:
 - 1) Applications for public office,
 - 2) Licenser by any State or local agency,
 - 3) Or contracting with the State Lottery.

- b. Does not permit the defendant to own, possess or have in his or her custody or control any firearm capable of being concealed.
- c. May be pled and proven as a prior if defendant is subsequently charged in a new case.

L. SEALING AND DESTRUCTION OF RECORDS (PC 851.8 ET. SEQ.)

1. Person arrested and no charges filed (PC 851.8(a))

- a. Person may petition the law enforcement agency, to seal and destroy records of the arrest. A copy of the petition shall also be served on the District Attorney.
- b. If law enforcement determines the person to be factually innocent, it shall, with the concurrence of the District Attorney, seal its arrest records and the petition for three years from the date of arrest and thereafter destroy its records and the petition.
 - 1) Law enforcement shall notify the Department of Justice and any other law enforcement agency that may have participated in the arrest to seal and destroy their records.
 - 2) The Department of Justice shall request the destruction of any records of the arrest that they have given to any other agency or to any other person or entity.
- c. If law enforcement takes no action within 60 days after receipt of defendant's petition, it shall be deemed denied. (PC 851.8(b))
- d. Petitioner may then file petition in the court having jurisdiction to seal and destroy arrest records.

A copy of the petition must be served on the District Attorneys at least 10 days before the hearing.

- e. A finding of factual innocence and order for sealing and destruction of records shall not be made unless the court finds that no reasonable cause exists to believe that the arrestee committed the offense.

- f. If the court finds the petitioner to be factually innocent, it shall order the law enforcement agency that arrested the petitioner to seal their records and the order for three years from the date of arrest and thereafter to destroy the records and court order.

The court shall also order the law enforcement agency and the Department of Justice to request the destruction of any records of the arrest which they have given to any local, state, or federal agency, person or entity and those agencies, person, or entities to destroy their records.

- g. The court shall give the petitioner a copy of any court order concerning the destruction of the arrest records.

2. Person arrested, pleading filed, but no conviction. (PC 851.8 (c))

- a. Petitioner, after a dismissal of charges, may petition the court that dismissed the action, for a finding of factual innocence.

A copy of the petition must be served on the District Attorney at least 10 days prior to any hearing.

- b. The court hearing shall be conducted as described in subsection (b) of 851.8.

A finding of factual innocence and order for destruction of records shall not be made unless the Court finds that no reasonable cause exists to believe that the arrestee committed the offense.

- c. If the court finds the petitioner to be factually innocent the Court shall grant the relief as provided in PC 851.8(b).

The court shall:

- 1) Order the law enforcement agency which arrested the petitioner to seal their records of the arrest and the order to seal for three years from the date of arrest and thereafter to destroy the records of the arrest and the court order.
 - 2) Order the law enforcement agency and the Department of Justice to request the destruction of any records of the arrest which they have given to any local, state or federal agency, persons or entities to destroy their records.
- d. The court may, at the time of a dismissal of charges, grant this relief if the District Attorney concurs.
- e. Whenever a person is acquitted of charges, and it appears to the judge presiding at the trial that the defendant is factually innocent, the judge may grant the relief.

Insert Petition to destroy arrest records

M. CERTIFICATE OF REHABILITATION AND PARDON

1. Who may file a Petition (PC 4852.01)

- a. Any person who has been convicted of a felony in California and subsequently released from custody by discharge or completion of the term prior to May 13, 1943.
- b. He/she has not been incarcerated in any state prison or institution since release.
- c. He/she has resided in California for three years immediately prior to the filing of the petition.
- d. Any person convicted of a felony who, on May 13, 1943, was confined in a state prison or institution or any person convicted of a felony after May 13, 1943, who was committed to a state prison or institution.
- e. Any person convicted of a felony (or a misdemeanor violation of an offense specified in PC 290) who has previously had that conviction set aside pursuant to PC 1203.4 and who has not been incarcerated since the dismissal, is not currently on felony probation and has resided in California for five (5) years prior to the filing of the petition.

2. Exceptions (PC 4852.01(d))

- a. Persons serving mandatory lifetime periods of parole, committed to death, convicted of PC 286(c), PC 288, PC 288(C), PC 288.5, PC 289(j) or persons in the military.
- b. The Governor shall have the right to pardon persons convicted of 286(c), PC 288, PC 288(C), PC 288.5, PC 289(j) if there are extraordinary circumstances. (PC 4852.01(e))

3. Period of rehabilitation (PC 4852.03)

- a. Begins with the discharge of the petitioner from custody due to completion of sentence or upon release on parole or probation.
- b. Shall be five (5) years residence in California plus a period of time as set forth in PC 4852.03(a).

4. Conduct (PC 4852.05)

- a. Petitioner shall live an honest, upright life and conduct him/herself with sobriety and industry.
- b. He/she shall exhibit a good moral character and obey all laws.

5. Filing the Petition (PC 4852.06)

- a. Filed with the superior court of the county of residence.
- b. A 30-day notice is given to:
 - 1) The District Attorney of the county of filing
 - 2) The District Attorney of each county where a conviction occurred.
 - 3) The office of the Governor
- c. The petitioner may retain counsel, or the Court may appoint the Public Defender (or private counsel).
- d. No filing fee is required.

6. Evidence (PC 4852.1)

- a. The court may require (at no expense to petitioner) all records relating to petitioner and the crime of which he/she was convicted.
- b. Any peace officer who receives such a request for information shall provide information on all violations of the law.
- c. After review of any such violations, the Court may deny the petition and set a new period of rehabilitation and require the petitioner to fulfill all requirement before granting the original petition.

7. Investigation and Report by District Attorney (PC 4852.12)

The court may request that the District Attorney conduct an investigation and report on any of the following:

- a. Residence of petitioner
- b. Petitioners criminal record
- c. Any representations made by petitioner
- d. The conduct of the petitioner during the period of rehabilitation
- e. Any other information the court deems necessary to make a determination

8. Certificate of Rehabilitation (PC 4852.13)

- a. The court may make an order declaring that the petitioner has been rehabilitated and recommend that the Governor grant a full pardon.
- b. The order shall be filed with the clerk and shall be known as a certificate of rehabilitation.
- c. “No certificate of rehabilitation shall be granted to a person convicted of any offense specified in Section 290 if the court determines that the petitioner presents a continuing threat to minors of committing any of the offenses specified in section 290.”

9. Petition to rescind certificate

- a. May be filed by the District Attorney in either the county of residence or the county where the certificate was obtained.
- b. If , by preponderance of the evidence, the court finds that the petitioner is a continuing threat to minors, it shall rescind the certificate. (PC 4852.13(c))

10. Distribution of certificate (PC 4852.14)

Certified copies are to be sent to:

- 1) The office of the Governor
State of California
Legal Affairs Office
Sacramento, CA. 95814
 - 2) The Board of Prison Terms
428 J. Street, Suite 600
Sacramento, CA. 95814-2329
 - 3) The California Department of Justice
Bureau of Criminal Identification
P.O. Box 903417
Sacramento, CA. 94203-4170
 - 4) The California Supreme Court
(for two prior felony convictions)
350 McAllister St.
San Francisco, CA. 94107-4783
- c. The certified copy of the certificate that is transmitted to the Governor shall constitute an application for a full pardon upon receipt of which the Governor may, without any further investigation, issue a pardon. (PC 4852.16)

11. Reporting the Certificate of Rehabilitation or the pardon (PC 4852.17)

- a. The granting of the certificate by the court and the granting of the pardon by the Governor must be reported to the Department of Justice immediately.
- b. The Department of Justice shall immediately record the fact and forward this information to the F.B.I. in Washington D.C. so that the petitioner's criminal record is updated.

12. Effects of a Pardon (PC 4852.17)

The petitioner shall be entitled to:

- a. Serve as a juror. (CCP 203(a)(5))
- b. Own, possess and keep any type of lawful firearm, unless the person was convicted of a felony involving the use of a dangerous weapon.
- c. Be considered for a peace officer position as a county probation officer or state parole agent but cannot hold other peace officer positions.

13. The issuance of a pardon shall not:

- a. Obliterate the record of the conviction(s) from the defendant's criminal history. However, prior convictions may be considered if the Petitioner is convicted of a new offense.
- b. Seal the petitioner's record.
- c. Allow the petitioner to state that he/she has no record or arrests or convictions. They must state that they were convicted and subsequently pardoned.

Insert Information sheet on certificate of rehabilitation and pardon

N. WRITS OF HABEAS CORPUS

1. General definitions

- a. Writ – a mandatory precept issued by a court directed to the sheriff or other officer authorized to execute the order.
- b. Habeas Corpus – literally “you have the body.” A procedure to obtain judicial determination of the legality of a person’s custody; in criminal cases it is used to bring the petitioner before the court to inquire into the legality of his confinement or to test the constitutionality of a criminal conviction.
- c. Petitioner – party who presents a petition to a court to institute an equity proceeding.
- d. Respondent – the adverse party who answers a petition.

2. Statutes for governing criminal habeas corpus

- a. Penal Code Sections 1473-1508
- b. California Rule of Court 260

3. Reasons for filing (PC 1473)

- a. Bail
 - 1) Right to have bail fixed before conviction
 - 2) Challenge the amount of bail set before trial as excessive
 - 3) Court refuses to admit defendant to any bail
- b. Denial of Fundamental Rights
 - 1) Right to counsel
 - 2) Suppression of material evidence by prosecution constituting a denial of a fair trial
 - 3) Right to a speedy trial
 - 4) Imprisonment of indigent unable to pay fine
 - 5) Guilty plea made without a waiver of constitutional rights or knowledge of collateral consequences.
 - 6) Application of proof beyond a reasonable doubt standard.
 - 7) Defendant’s conduct was constitutionally protected.
 - 8) Right to public trial

c. Changes in Law

- 1) Case law expands a defendant's rights and has a retroactive effect.
- 2) Statutory law repeals a crime or reduces/eliminates a punishment.

d. Invalid or Excessive Sentences

- 1) Sentence augmented by invalid prior conviction.
- 2) Sentence violates multiple punishment bar under PC 654.
- 3) Sentence increased by amendment to final judgment.
- 4) Sentence violates constitutional rights.
- 5) Violation of Estrada rule (statutory amended reduction of punishment was enacted before judgment is final.)
- 6) Erroneous computation of term or denial of credit.
- 7) Improper administration of indeterminate sentence law.
- 8) Retroactive application of determinate sentence law.

e. Illegal treatment while detained

- 1) Prisoner's rights
- 2) Conditions of imprisonment

f. Extradition

- 1) Crime is substantially charged in demanding state.
- 2) Petitioner is the person charged.
- 3) Petitioner was in demanding state at the time of the crime.

g. Pardon/Commutation of sentence

- 1) Used to determine if the conditions attached to a gubernatorial pardon or commutation are reasonable.
- 2) Used to restrict gubernatorial communication when the commutation is made on the condition that successive governors could not make further modifications.

h. Contempt

- 1) Used to review contempt orders of attorneys.
- 2) Defendant's witnesses.

i. False evidence

- 1) False evidence introduced at trial discovered.
- 2) False physical evidence, believed to be factual, at the time of entry of plea.

4. Requirements for Filing Petition (PC 1474)

- a. Signed by petitioner or representative.
- b. The person and/or place illegally confining petitioner must be manned or described.
- c. The alleged illegality must be defined.
- d. Petition should state whether a prior application for a writ regarding the same detention has been made. If so, a brief description of procedure and results should be included.
- e. A copy of the petition must be served on District Attorney and any other agency involved at least 24 hours before writ is made returnable.
- f. The petition must be verified.
- g. Judicial Council Form MC 275 must be used if petition is requesting relief from or modification of custody.

5. Reviewing the Petition

- a. Peremptory denial of Petition on the Merits/Procedure
 - 1) Minute order/order denying petition.
 - 2) Must state reasons for denial.
 - 3) Copy of minutes/order mailed to all parties.
 - 4) Denial must be made within 30 days of filing of petition (CRC Rule 260 (a)).

b. Request to Amend Petition/Additional Affidavits

- 1) Court may order petitioner to amend petition to make specific allegations.
- 2) Court may also order an affidavit from doctor or custodian.

c. Transfer Petition to Sentencing Court

- 1) Order to transfer petition prepared.
- 2) Petition should be transferred within 30 days of filing.

6. Ruling on the Petition

a. Order to show cause (OSC) (CRC Rule 260)

- 1) Must be ordered within 30 days of filing the petition.
- 2) OSC will be directed to a person or agency that has the authority to act on it.
- 3) OSC will state deadline for Respondent to file return.

b. Return on Order to Show Cause

- 1) Must be in writing.
- 2) Must state whether or not petitioner is in custody or under restraint.
- 3) Cite authority for the imprisonment or restraint.
- 4) If custody has been transferred, it must state to whom, the time and place, for what cause, and by what authority the transfer took place.

c. Denial (Traverse) by petitioner (“Opposition”)

- 1) Must be in writing.
- 2) Must be filed in time limit specified in the OSC (Usually 30 days from date of filing of the return but may be shorter).
- 3) May constitute a supplemental petition if counsel has been appointed.

d. Evidentiary hearing

- 1) CRC Rule 260(c) states requirements for hearings.
- 2) PC 1484 authorizes the attendance of witnesses.
- 3) Appointment of counsel (usually public Defender).
- 4) Burden of proof is by preponderance of the evidence and lies with the petitioner.
- 5) Bail may be set if the offense is bailable (usually if petition is filed before a conviction) (PC 1476)

Insert Petition for Writ of Habeas Corpus Here

VIII. MENTAL HEALTH PROCEEDINGS

A. MENTAL INCOMPETENCE (PC 1367,1368)

“A person cannot be tried or adjudged to punishment while that person is mentally incompetent. A defendant is mentally incompetent for purposes of this chapter if, as a result of mental disorder or developmental disability, the defendant is unable to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a rational manner.” (PC 1367(a))

1. Who May Make the Motion

- a. Defense counsel must make a motion when a doubt arises as to the current mental competency of a defendant.
- b. The court, on its own motion, may express a doubt as to the defendant’s competency.

2. When Motion May be Made

- a. Competency issues may be done at any time during criminal proceedings.
- b. Criminal proceedings **are suspended** pending the finding on the issue of competency and any pending hearings or trial dates are to be vacated.
- c. Penal Code Section 1368.1 PC does allow defense counsel to make motions pursuant to PC 995, PC 1538.5 and demurrers while the competency issue is pending.

3. Medical Evaluation of Defendant

- a. Appointment of Doctor
 - 1) The court appoints a psychiatrist or psychologist. If proceedings were suspended on the court’s motion, two doctors are appointed.
 - 2) Matter is continued for a period of time to allow the doctor to examine the defendant; the clerk notifies the doctor.
- b. The court and counsel consider doctor(s) report.

4. Defendant is Found Competent

- a. Court finds the defendant is competent.
- b. Criminal proceedings are reinstated and pending hearings are re-set.

5. Defendant is Found Incompetent

- a. Court finds the defendant is not competent.
- b. Matter is referred to the local Department of Mental Health (Forensic Services) for an evaluation on placement pursuant to PC 1370.
- c. Mental Health has 15 judicial days to submit a recommendation on placement to the court.

“Prior to making the order directing that the defendant be confined in a treatment facility or placed on outpatient status, the court shall order the county mental health director or his or her designee to evaluate the defendant and to submit to the court within 15 judicial days of the order a written recommendation as to whether the defendant should be required to undergo outpatient treatment, or committed to a treatment facility. No person shall be admitted to a treatment facility or placed on outpatient status under this section without having been evaluated by the county mental health director or his or her designee.” (PC 1370(a)(2))

6. Notification Packet for the Department of Mental Health

Documents must include:

- a. Order for Evaluation (certified copy)
- b. Copy of last minute order (certified copy)
- c. Copy of arrest report(s)
- d. Copy of Rap Sheet
- e. Copy of doctor’s report
- f. Copies of any other psychiatric reports in file

7. Defense Request for Jury Trial

- a. Defense counsel will not stipulate to the finding of the court appointed doctor and requests a jury trial.
- b. Jury trial is conducted in the same manner as a criminal jury trial.
- c. Burden of proving that the defendant is **not** competent falls on the defense and the jury’s decision is based on a *preponderance of the evidence*.

d. After trial, the proceedings are essentially the same as if the matter had been submitted.

1) Competent - criminal proceedings are reinstated.

2) Incompetent - referred to Department of Mental Health.

8. Mental Incompetence on Sex Crimes (PC 1370(a)(1)(B)(ii))

a. Prosecutor shall determine if:

Defendant was previously found incompetent on a charge listed in PC 290 or is currently the subject of pending PC 1368 proceedings on a charge listed in PC 290.

b. Prosecutor shall notify the court and defendant in writing.

c. Court shall order the defendant to be delivered to a state hospital or other secure facility.

1) Defendant will be placed for care and treatment of mental disorders.

2) Placement will be until the court makes specific findings on the record that alternate placement would provide more appropriate treatment and not pose a danger to the health and safety of others.

9. Mental Incompetence on Sex Crimes/No Bail (PC 1370(a)(1)(B)(iii))

a. Defendant was previously denied bail as the court found defendant's release would result in great bodily harm to others.

b. Court shall order defendant delivered to a state hospital or other secure facility.

Defendant will be placed for care and treatment of mental disorders and placement will be until the court makes a finding on the record that alternate placement would provide more appropriate treatment and not pose a danger to the health and safety of others.

c. Clerk is to notify the Department of Justice in writing of any finding of mental incompetence on a defendant subject to PC 290.

10. Placement (PC 1370(a)(2))

a. Recommendation for placement must be accompanied by justification for such placement including needs for secure environment, intensity and duration of treatment, location of facility and availability of resources.

- b. Alternatives available for placement:
 - 1) State Hospital (such as Patton State Hospital).
 - 2) Local public or private treatment facilities.
 - 3) Community out-patient treatment.
- c. The court determines the most appropriate treatment facility and orders the defendant committed.

11. Commitment Order

- a. The court must state the maximum term of commitment. (PC 1370(a)(3)(B))
 - 1) No more than three (3) years on a felony charge.
 - 2) No longer than one (1) year or the maximum term of confinement time available on a misdemeanor.
- b. The court must also state the total number of actual days credit for time served to be applied to the commitment. No good/work time is given. (PC 1370(a)(3))
- c. Court should include an order for firearms restriction.
- d. The clerk will prepare the commitment packet for the state hospital which shall include: (PC 1370(a)(3))
 - 1) Certified copy of the Commitment to State hospital (PC 1370)
 - 2) Certified copy of commitment minute order
 - 3) Arrest report
 - 4) All previous psychiatric reports
 - 5) Rap Sheet
 - 6) Mental Health Evaluation
 - 7) Records that defendant has a previous mental incompetence on a PC 290 offense
- e. This packet will accompany defendants to state hospital.
- f. Bail is exonerated. (PC 1371)
- g. Order for commitment shall include an order directing the sheriff to redeliver the defendant to the court without further order of the court upon receiving a copy of the certificate of restoration of defendant's competence. (PC 1372(a)(2))

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF YOURS

The People of the State of California

Plaintiff

vs

Defendant

CASE NUMBER:
ORDER FOR EVALUATION
PC 1368/1369

Charges:

IT IS HEREBY ORDERED, pursuant to Penal Code Sections 1368/1369, that
_____ examine the above named defendant and report to the
Court the results of the examination as to his or her competence to stand trial and report
back to
the Court by _____ AM. Said report should be filed with
the _____ court two (2) days prior to this hearing.
[] Interpreter Required. Language: _____

Judge

DATED: _____

Custody Status:

BY:

Booking #:

Deputy Clerk

Attorney's Address

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF YOURS

THE PEOPLE OF THE STATE OF CALIFORNIA)	
Plaintiff)	
)	CR292992
vs.)	
)	ORDER FOR EVALUATION
)	(PC 1370)
ELIZABETH BORDEN,)	
Defendant)	

IT IS HEREBY ORDERED, pursuant to Penal Code section 1370, that the above-named defendant be made available for examination by the Director or Associate of Our County **Mental Health Department** for the purpose of an evaluation and recommendation after a finding by the above-entitled Court that the defendant is not presently competent to stand trial and/or cooperate with counsel.

IT IS FURTHER ORDERED that the report be filed with the Superior Court by **August 22, 2003**, requesting said report contain the Superior Court case number and be submitted with three copies.

DATED: **July 18, 2003**

ROY BEAN
JUDGE OF THE SUPERIOR COURT

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF YOURS

THE PEOPLE OF THE STATE OF CALIFORNIA
Plaintiff

SC000375

vs.

ELIZABETH BORDEN

Defendant

COMMITMENT TO DEPARTMENT
OF HEALTH FOR PLACEMENT
STATE HOSPITAL (P.C. 1370)

WHEREAS, on **March 22, 2003**, an Information/Complaint was filed in said Court by the District Attorney charging the defendant with **PC 187(a)(1)** the defendant being present and represented by **Deputy Public Defender P. Mason**, his/her attorney, was duly arraigned on said information/complaint.

After certain proceedings were had, a doubt arose as to the mental competency of the defendant, criminal proceedings were suspended in Superior Court, and the Court appointed as experts and alienists to examine said defendant and investigate his/her mental competency [] and testified in Court [**X**] testimony of medical examiners waived and cause submitted on written reports of medical examiners; thereafter, on **May 29, 2003**, the Court, having found the defendant to be mentally incompetent to stand trial.

It is hereby ORDERED, ADJUDGED AND DECREED that the above named defendant be committed to, and the Sheriff is to deliver the defendant to the Department of Health at Patton State Hospital for care and treatment and shall immediately return defendant to this court for further proceedings when notified.

MAXIMUM TERM OF COMMITMENT: **3 years**

CREDIT FOR TIME SERVED: **100 days actual custody**

The Superintendent shall make a written report to the Court pursuant to Penal Code Section 1370(b)(1) and (2).

DATED: **June 20, 2003**

ROY BEAN

Judge of the Superior Court

12. Progress Reports (PC 1370(b)(1))

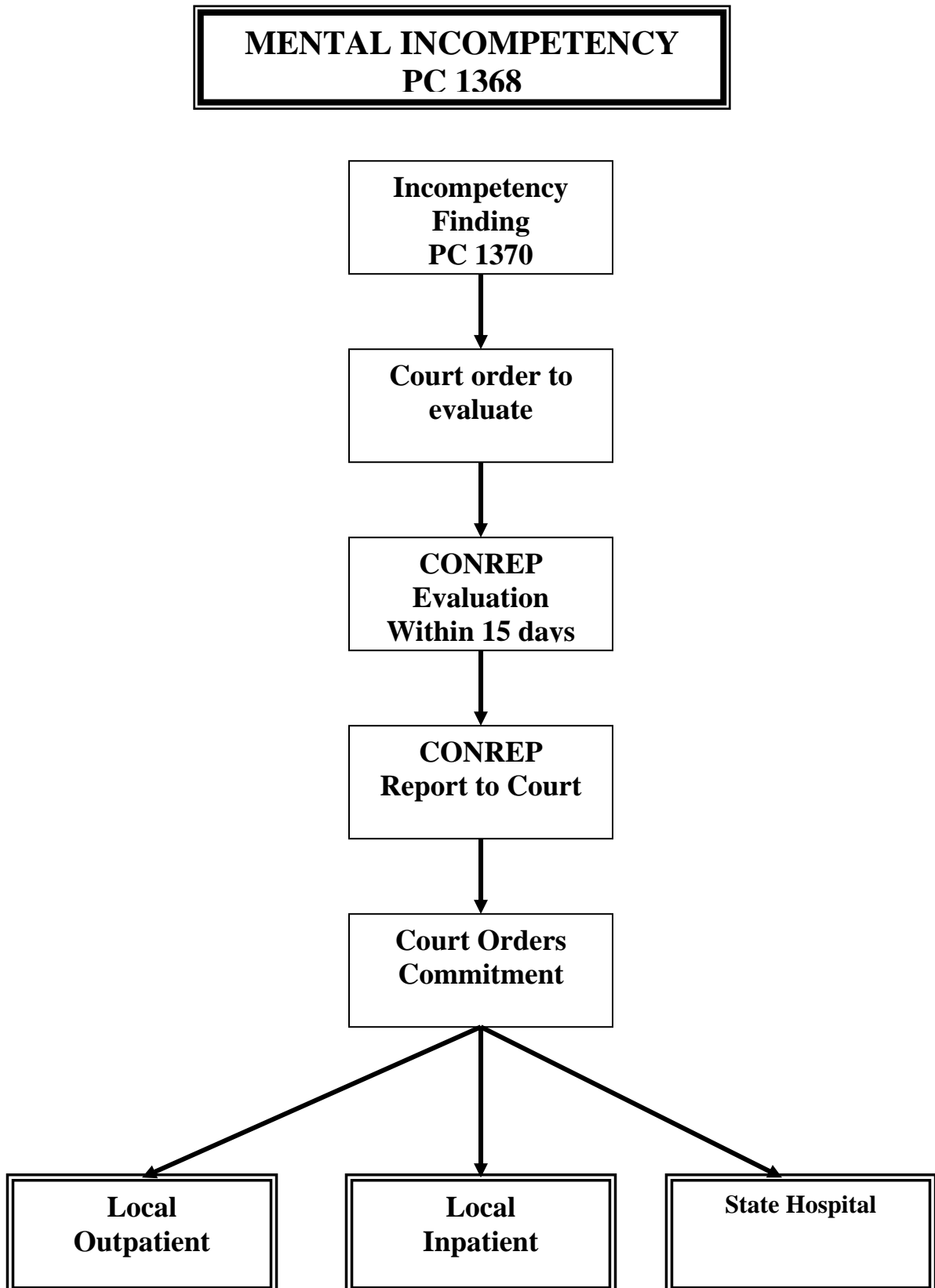
- a. Submitted to the court within 90 days of commitment and every six months thereafter.
 - 1) Includes the person's progress toward recovery of mental competence, current treatment, goals, progress, medications, diagnosis and recommendations.
 - 2) The recommendation must be one of the following:
 - a) Retain and treat
 - b) Refer for outpatient treatment
 - c) Return to court as competent to stand trial
 - d) Return to court as there is no likelihood the person will regain mental competence in the foreseeable future.
- b. At the end of 18 months, a defendant who is still hospitalized or on outpatient status shall be returned to court for a hearing pursuant to the procedures set forth in PC 1369. (PC 1370(b)(2))
 - 1) The court should order the hospital to complete an updated and current progress report for the defendant's potential to recover mental competence.
 - 2) After reviewing the hospital report, the court will make a finding:
 - a) Defendant remains mentally incompetent. He/she will be returned to the state hospital for further treatment.
 - b) Defendant is now mentally competent to stand trial and criminal proceedings are reinstated.
 - c) The defendant remains mentally incompetent and appears to be gravely disabled.
 - a) The court will order the Conservator's Office to determine if he/she is eligible for the appointment of a conservator. (WI 5350)
 - The criminal case can be dismissed (or terminated).
 - 3) At each review hearing the court shall determine if the security level of the housing and treatment facility is appropriate. (PC 1370(b)(4))

13. Certificate of Competence (PC 1372(a)(1))

- a. Submitted by the hospital (or the director of the treatment facility) when it is determined that the defendant is mentally competent.
- b. Defendant must be removed from the hospital within 10 days of filing the Certificate to avoid the committing court from being charged for the continued housing of the defendant in the hospital.
- c. Counsel will either:
 - 1) Submit the finding of the hospital to the court for a finding that competency has been restored.
 - 2) Challenge the finding and move that an additional local doctor be appointed to determine present competency.
 - 3) Request a formal hearing.
 - 4) Upon completion of the hearing, (or upon stipulation of counsel) the court will find competency has been restored and reinstate criminal proceedings or find that competency is not restored and return the defendant to the hospital.

14. Maximum Term of Commitment (PC 1370(c)(1), 1370.01(c)(1))

- a. At the end of three years from the date of commitment (felony).
- b. At the end of one year from the date of commitment or at the end of maximum term of incarceration for the most serious offense charged, whichever is shorter (misdemeanor).



B. DEVELOPMENTALLY DISABLED DEFENDANTS (PC 1367)

“As used in this section, “developmental disability” means a disability that originates before an individual attains age 18, continues, or can be expected to continue, indefinitely and constitutes a substantial handicap for the individual, and shall not include other handicapping conditions that are solely physical in nature. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include handicapping conditions found to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, but shall not include other handicapping conditions that are solely physical in nature.” (PC1370.1(H))

“...If it is suspected that the defendant is developmentally disabled, the court shall appoint the director of the regional center for the developmentally disabled established under Division 4.5 (commencing with section 4500) of the Welfare and Institutions Code, or the designee of the director, to examine the defendant.” (PC 1367(a))

1. Who May Make the Motion

- a. Defense counsel must make a motion pursuant to this section when a doubt arises as to the current mental competency of a defendant and counsel has reason to believe that the defendant may be developmentally disabled.
- b. The court, on its own motion, may express a doubt as to the defendant's competency.
 - 1) Criminal proceedings are suspended until a finding of competency is made.
 - 2) PC 1368.1 does allow defense counsel to make motions pursuant to PC 995, PC 1538.5 and demurrers while competency issue is pending.
 - 3) May be done at any time during criminal proceedings.
 - 4) Criminal proceedings are suspended pending the finding on the issue of competency. (PC 1368(b))
 - 5) When criminal proceedings are suspended any pending hearings or trial dates are to be vacated.

2. Medical Evaluation of the Defendant

- a. Appointment of the Regional Center for Evaluation.
 - 1) The regional center is notified to prepare an evaluation of the defendant's mental condition and determine if he/she is currently unable to cooperate with counsel and to understand the nature of the court proceedings due to a developmentally disability.
 - 2) Matter is continued for approximately three weeks.
- b. The court and counsel consider the regional center's report.
 - 1) If defense counsel agrees with the regional center's finding, the matter is submitted.
 - 2) The court may then make the finding of defendant's competence.

3. Defendant Is Found Competent

- a. Criminal proceedings are reinstated.
- b. If proceedings were suspended prior to the preliminary hearing, it is to be re-set for preliminary hearing.
- c. If proceedings were suspended prior to jury trial, the readiness, trial or other hearings are re-set.

4. Defendant Is Found Incompetent

- a. Matter is referred back to the regional center for a recommendation on placement pursuant to PC 1370.1(a)(2).
- b. The regional center has 15 judicial days to submit a recommendation on placement to the court.

5. Placement (PC 1370.1(a)(1)(B)(I))

- a. Alternatives available for placement:
 - 1) State Hospital (such as Napa State Hospital)
 - 2) Local public or private treatment facilities
 - 3) Community out-patient treatment
- b. The court commits the defendant to the most appropriate treatment facility.

6. Commitment Order

- a. The court must state the maximum term of commitment.
 - 1) No more than three (3) years on a felony charge.
 - 2) No more than one (1) year or the maximum term of confinement time available on a misdemeanor.
- b. The court must also state the total number of actual day's credit for time served to be applied to the commitment. No good/work time is given.
- c. The clerk will prepare the commitment packet for the state hospital which shall include:
 - 1) Certified copy of the commitment to the State Department of Developmental Services (PC 1370.1)
 - 2) Certified copy of commitment minute order
 - 3) Arrest report
 - 4) All previous psychiatric reports
 - 5) Rap Sheet
 - 6) Regional Center Evaluation(s)
- d. This packet will accompany defendant to state hospital or treatment facility.

7. Progress Reports (PC 1370.1(b)(1))

- a. Submitted to the court within 90 days of commitment.
 - 1) Includes the person's progress toward recovery of mental competence.
 - 2) If the defendant has not become competent and the report discloses that there is a substantial likelihood that he/she will become competent within the next 90 days, the court may order that the defendant remain in the hospital or treatment facility.
- b. Within 150 days of commitment (or if the defendant becomes competent) the hospital or treatment facility shall submit a report on the defendant's progress.
 - 1) If the report indicates that there is no substantial likelihood that the defendant has become competent, the court shall return the defendant to court.
 - 2) The court will initiate conservatorship proceedings.

- c. At the end of 18 months, a defendant who is still hospitalized or on outpatient status shall be returned to court to a hearing pursuant to the procedures set forth in PC 1369. (PC 1370.1(b)(2))
 - 1) The court should order the hospital to complete an updated and current progress report for the defendant's potential to recover mental competence.
 - 2) After reviewing the current hospital report, the court will make a finding:
 - a) The defendant remains mentally incompetent. He/she will be returned to the state hospital for further treatment.
 - b) The defendant is now mentally competent to stand trial and criminal proceedings are reinstated.
 - c) The defendant remains mentally incompetent and appears to be **gravely disabled**.
 - d) The court will order the Conservator's Office to evaluate the defendant to determine if he/she is eligible for the appointment of a conservator. (WI 5350)

The criminal case can be dismissed (or terminated).

8. Certificate of Competence (PC 1372(a)(1))

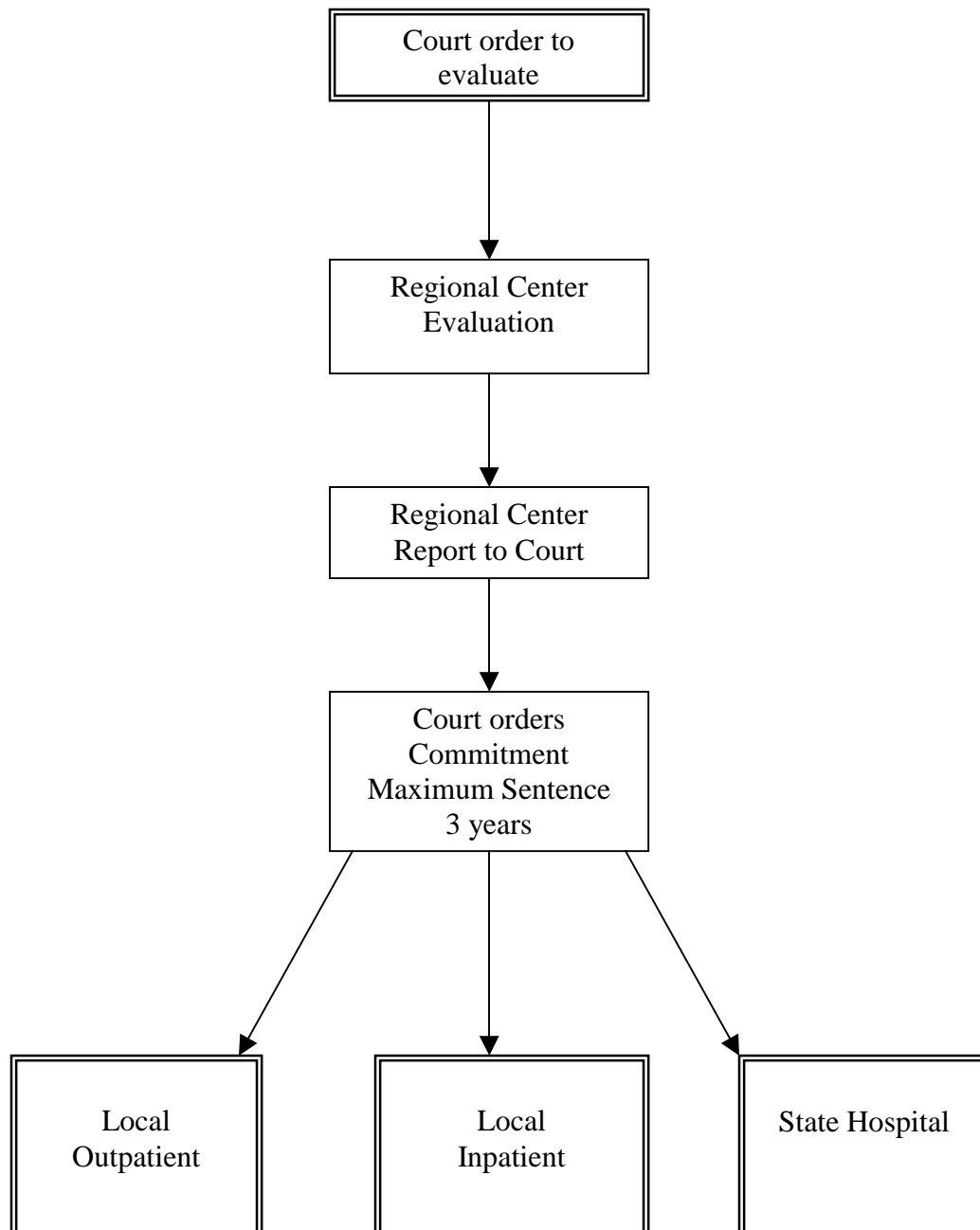
- a. Submitted by the hospital (or the director of the treatment facility) when it is determined that the defendant is mentally competent.
- b. Defendant must be removed from the hospital within 10 days of filing the Certificate in order to avoid the committing court from being charged for the continued housing of the defendant in the hospital.
- c. Counsel will either:
 - 1) Submit the finding of the hospital to the court for a finding that competency has been restored.
 - 2) Challenge the finding and move that an additional local doctor be appointed to determine present competency.
 - 3) Request a formal hearing where evidence is presented and witnesses are sworn.
- d. Upon completion of the hearing, (or upon stipulation of counsel) the court will find competency has been restored and reinstate criminal proceedings or find that competency is not restored and return the defendant to the hospital.

9. Maximum Term of Commitment (PC 1370.1(c)(1)(A))

- a. At the end of three years from the date of commitment (felony).
- b. At the end of one year from the date of commitment or at the end of maximum term of incarceration for the most serious offense charged, whichever is shorter (misdemeanor).
- c. If the defendant has not become competent he/she must be returned to court for a hearing. The court may:
 - 1) Dismiss (or terminate) the criminal charges in the furtherance of justice. (PC 1370(c)(2))
 - 2) Order the Conservators' Office to evaluate the defendant to determine if they are eligible for the appointment of a conservator pursuant to WI 5350, etc. (PC 1370(c)(2))

INSERT REFERRAL REGIONAL CENTER

DEVELOPMENTALLY DISABLED PC 1369



C. NOT GUILTY BY REASON OF INSANITY (PC 1026)

“When a defendant pleads not guilty by reason of insanity, and also joins with it another plea or pleas, the defendant shall first be tried as if only such other plea or pleas had been entered, and in that trial the defendant shall be conclusively presumed to have been sane at the time the offense is alleged to have been committed. If the jury shall find the defendant guilty, or if the defendant pleads only not guilty by reason of insanity, then the question whether the defendant was sane or insane at the time the offense was committed shall be promptly tried, either before the same jury or before a new jury in the discretion of the court.” (PC 1026(a))

1. Entering the Plea

- a. At arraignment, the defendant may enter a dual plea of not guilty and not guilty by reason of insanity.
- b. Defendant may enter a single plea of not guilty by reason of insanity.
- c. Criminal proceedings **are not** suspended.

2. Evaluation of Defendant (PC 1027)

- a. The court orders a psychiatric evaluation be completed.
- b. The court must appoint two (2) and may appoint three (3) psychiatrists or licensed psychologists.

3. Trial

- a. Process is a two-phase (bifurcated) trial when dual pleas are entered.
- b. The guilt or innocence of the defendant must first be determined by trial, court or plea.
- c. The second phase of the proceedings determines the sanity of defendant at the time of the commission of the crime.
 - 1) Direct testimony may be taken from the doctors.
 - 2) The matter may be submitted on the written reports of the doctors if both parties stipulate.

4. Finding on the Defendant’s Sanity by Jury or Court

- a. If the defendant is found to have been sane at the time of the commission of the offense, the court will proceed with sentencing.
- b. If the defendant is found not to have been sane at the time of the commission of the offense, the defendant is subject to a mental health commitment until which time his/her sanity is found to be restored.

5. Placement Recommendation

- a. Defendant must be referred to the local Department of Mental Health for a recommendation on placement. Documents must include:
 - 1) Order for Evaluation (certified copy)
 - 2) Copy of last minute order (certified copy)
 - 3) Copy of arrest report(s)
 - 4) Copy of Rap Sheet
 - 5) Copy of doctor's report
 - 6) Copies of any other psychiatric reports in file
- b. Local mental health has 15 judicial days to complete an evaluation and recommendation. (PC 1026(b))
- c. Choices for commitment include:
 - 1) State Hospital (such as Patton State Hospital)
 - 2) Out-patient treatment
 - 3) Local in-patient treatment facility

6. The Commitment

- a. The maximum term of commitment is the maximum time to which the defendant could have been sentenced to if he/she had not been found guilty by reason of insanity. (PC 1026.5)
- b. This term, along with any pre-sentence custody credits, should be stated on the record and included in the clerk's minutes.
- c. The following items shall be provided by the court to the designated treatment facility:
 - 1) The commitment order, including specification of charges
 - 2) A computation of the maximum term of commitment
 - 3) A computation of credit for time served to be deducted from the maximum commitment term
 - 4) Rap sheet
 - 5) Arrest/offense reports

- 6) Any psychiatric reports
- 7) The recommendation of the local mental health department

7. Progress Reports (PC 1026(f))

- a. Submitted within the first six (6) months and every six (6) months thereafter.
- b. Shall set forth the progress and status of the defendant.

8. Restoration of Sanity (PC 1026.2)

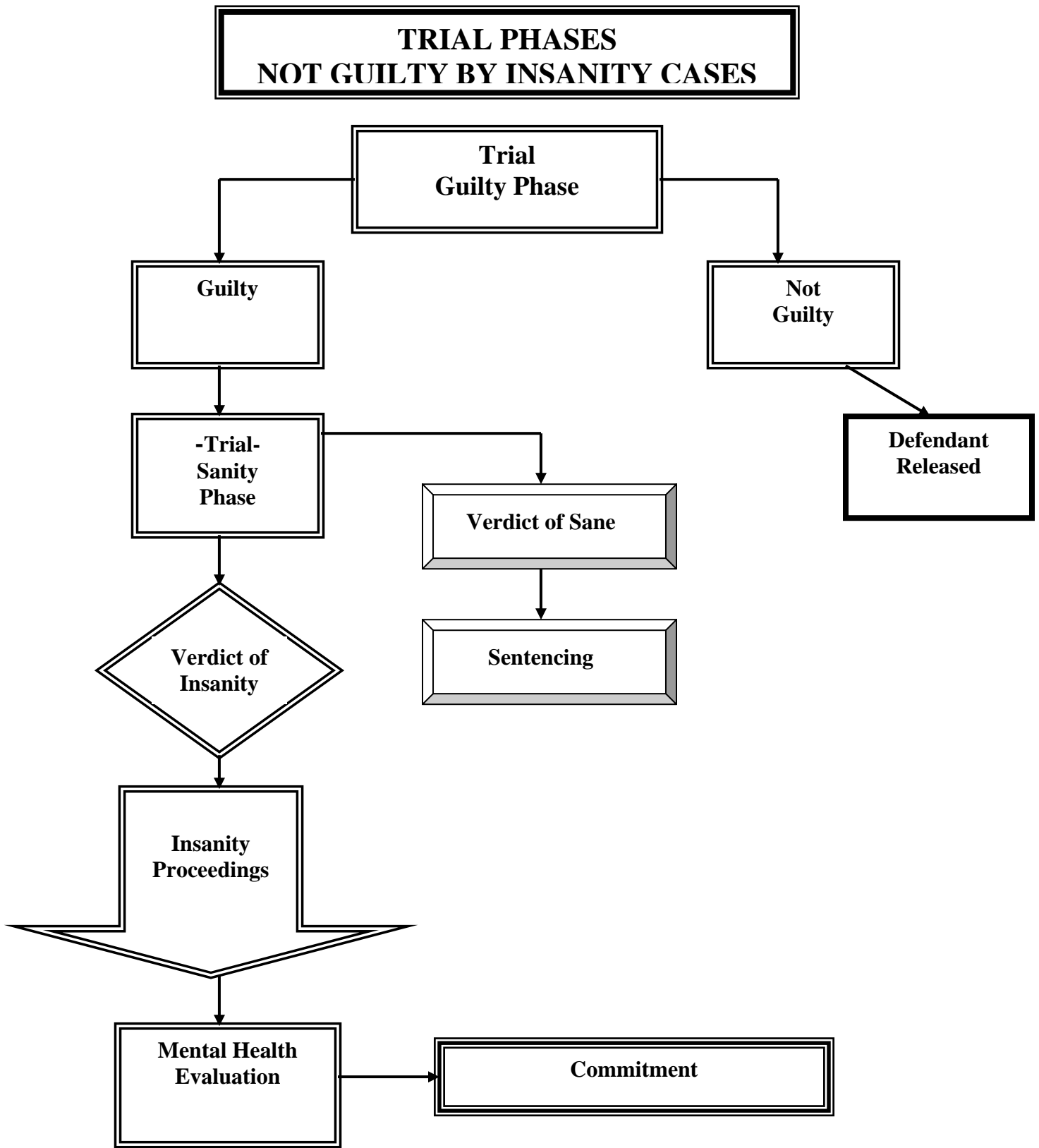
- a. After 180 days, the defendant or the director of the treatment facility may petition the court for hearing on the issue of restored sanity.
 - 1) When the defendant petitions the court, the treatment facility is ordered to complete a report and submit it to the court regarding the defendant's sanity.
 - 2) When the treatment facility petitions the court, the local mental health department is ordered to complete a report regarding placement in conditional release program (out-patient status).
- b. A hearing is held to determine if the defendant would be a danger due to mental defect, disease, or disorder if under supervision and treatment in the community. (PC 1026.2(e))
- c. If the petition is granted:
 - 1) The defendant is placed with an appropriate local mental health program for one year.
 - 2) Defendant must complete one year in the conditional release program or be referred back to the court by the director of the conditional release program before the court can find sanity restored.
 - 3) At the end of one year on outpatient status, the court will hold a hearing to determine if the defendant's sanity has been restored.
- d. If the petition is denied:
 - 1) The defendant will be returned to the state hospital or outpatient treatment that he/she was in prior to the petition.
 - 2) A new petition cannot be filed for one year.

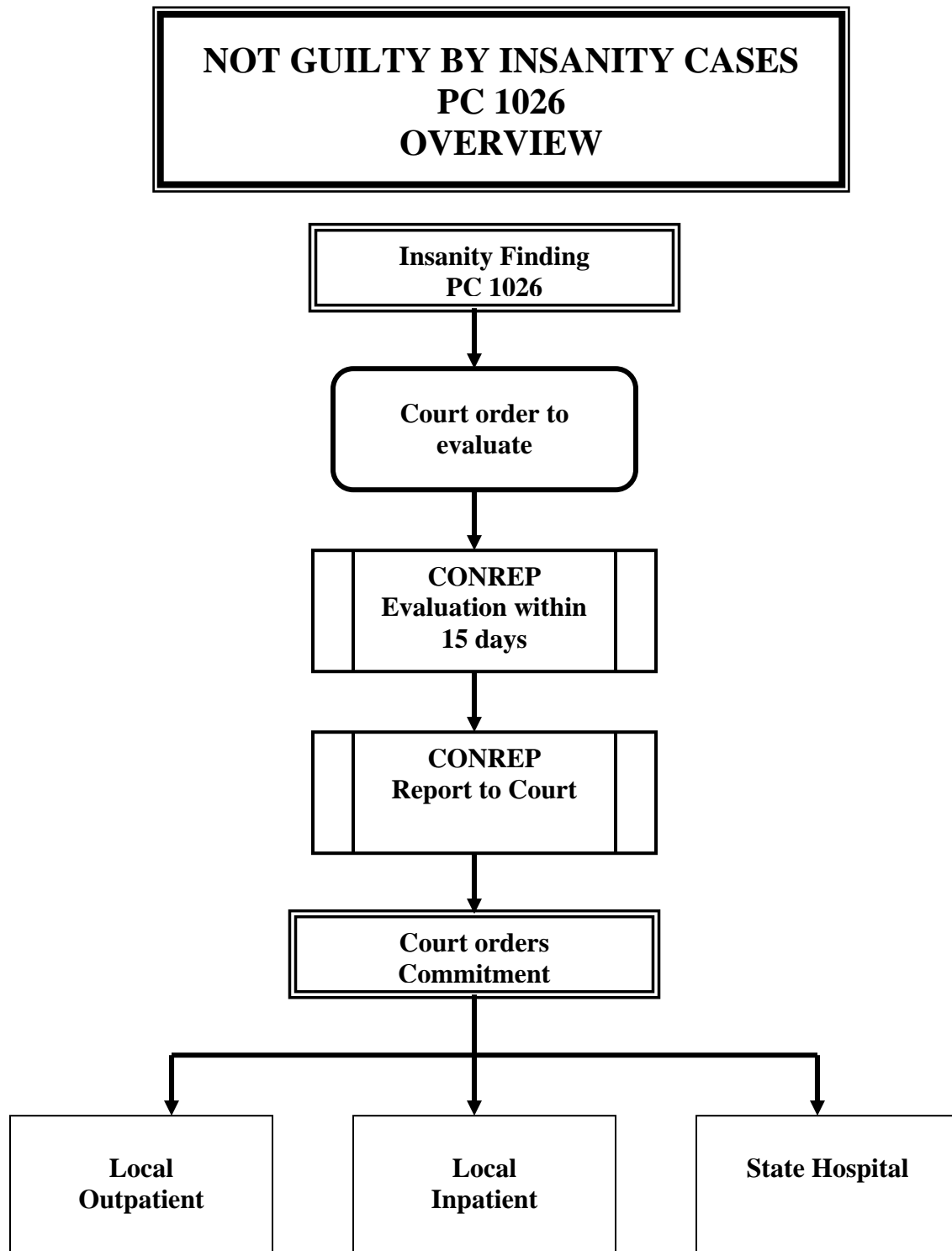
9. Petition for Commitment Extension (PC 1026.5)

- a. A report is prepared by the director of the treatment facility and provided to the prosecutor no later than 180 days prior to the expiration of the defendant's commitment.
- b. The prosecutor petitions the court to extend the commitment no later than 90 days prior to the expiration of the commitment.
- c. The defendant is returned to court and housed at a treatment facility or at the county jail pending hearing.
- d. The court appoints counsel and the defendant has the right to a jury trial.
- e. The defendant is arraigned on the petition and denies or admits the allegations.
 - 1) If the allegations are admitted, the court may immediately order him/her recommitted to the facility for an additional two years from the date of expiration of the original commitment.
 - 2) If the allegations are denied, a date is set for a jury trial unless the defendant and the prosecuting attorney waive the jury.
 - 3) If after trial, the defendant is found to still constitute a substantial danger to others, the court may order the person recommitted to the facility for an additional two years from the date of the expiration of the original commitment.
 - 4) If the defendant is found to no longer pose a danger to others, he/she will be returned to the facility until the expiration of the original commitment.

INSERT REFERRAL TO DR 1026

INSERT REFERRAL TO DMH 1026





D. OTHER MENTAL HEALTH MATTERS

1. LPS Conservatorship Referral (WI 5008(H)(1)(B)–5350–WI 6500)

a. Qualifying Criteria

- 1) A defendant under commitment pursuant to PC 1370 or PC 1370.1 is not competent and:
 - a) Is not likely to regain competency in the foreseeable future;
 - ~or~
 - b) Has reached their maximum term of commitment they shall be returned to court.
- 2) The defendant shall be referred to the office of the conservator for an evaluation as to his/her eligibility for the appointment of a conservator.

b. Eligibility

- 1) If the defendant is eligible for a conservator, the office of the conservator will take over the care and treatment.

The criminal action is subject to dismissal pursuant to PC 1385.

- 2) If the defendant is not eligible for a conservator:

- a) He/she shall not be subject to further confinement.
- b) The criminal action is subject to dismissal pursuant to PC 1385.

2. Narcotic Addiction and The California Rehabilitation Center (W&I 3051)

a. Review

- 1) The defendant is sentenced to state prison.
- 2) Criminal proceedings are suspended pursuant to WI 3051.
- 3) The District Attorney is ordered to file a petition for commitment as a narcotic addict.
- 4) A medical doctor examines the defendant and a report is filed with the court.
or
Counsel stipulate that defendant is a narcotic drug addict, waive filing of the petition, and waive the examination by a medical doctor.
- 5) The defendant is found to not be addicted or in imminent danger of becoming addicted.
 - a) Criminal proceedings are reinstated. The sentence imposed is now executed.
- 6) The defendant is found to be addicted or in imminent danger of becoming addicted and is committed to CRC.
- 7) The maximum time of commitment at CRC is the same as the suspended sentence.
- 8) A commitment package is prepared containing the following:
 - a) A certified copy of the commitment order.
 - b) A certified copy of the petition.
 - c) A certified copy of the sentencing minute order.
 - d) A certified copy of the accusatory pleading.
 - e) Copies of all medical examination reports.
 - f) A copy of the probation report.

b. CRC Returnee

- 1) Discharges - Defendant has successfully completed the rehabilitation program at the CRC. (WI 3200/3201)
 - a) Hearing is scheduled at the request of the CRC
 - b) At the hearing:
 - i. Criminal proceedings are reinstated.
 - ii. The commitment is vacated.
 - iii. The court can modify the sentence, discharge the defendant or dismiss the criminal charges.
- 2) Exclusions - Defendant has not successfully completed the rehabilitation program at the CRC. (WI 3053)
 - a) Hearing is scheduled at the request of the CRC upon notification
 - b) At the hearing
 - c) Criminal proceedings are reinstated.
 - iv. Prison sentence previously imposed is now executed.
 - v. CRC custody credits/actual days only (no conduct credits) are given.
 - vi. Prison packet is prepared.
 - d) CRC must be notified of subsequent court proceedings.
- 3) Defendant absconds while on rehabilitation
- 4) Hearing is scheduled at the request of the CRC notification.

At the hearing

 - a) Criminal proceedings are reinstated.
 - b) A bench warrant is issued.

E. MENTALLY DISORDERED PRISONERS (PC 2972)

1. Definition

- a. For state prisoners who stand convicted of crimes listed in PC 2962(e)(2) who suffer from severe mental disorders that are not in remission or cannot be kept in remission without treatment--not to be confused with Sexually Violent Predators
- b. A mental disorder was one of the causes of, or was an aggravating factor in the commission of the crime.
- c. The prisoner must have been receiving treatment for a minimum of 90 days during the year prior to his/her scheduled release.

2. Request for Extension of Treatment

- a. Department of Corrections submits recommendation to the District Attorney of the county of commitment that a petition be filed with the court to extend treatment.
- b. District Attorney files a Petition for Extension of Commitment with the court.

3. Hearing re Extension

- a. Defendant has a right to court appointed counsel and to a jury trial.
- b. The standard of proof is beyond a reasonable doubt and the jury verdict must be unanimous.
- c. Trial must commence no later than 30 calendar days prior to defendant's scheduled release date unless he/she waives time.

4. Finding/Re-Commitment

- a. The jury (or court) finds the defendant has a severe mental disorder that is not in remission or cannot be kept in remission and that he/she represents a substantial danger of physical harm to others.
- b. The Court shall order the defendant recommitted to the facility he/she was previously confined in or recommitted to outpatient treatment or committed to the State Department of Mental Health if the person was in prison.

5. Term of Commitment

- a. The commitment shall be for one year from the date of termination of parole or a previous commitment or the scheduled release date from prison.
- b. Prior to the expiration of the commitment, another petition may be filed asking for another extension.

INSERT MDP COMMIT

INSERT JC FORM MDP

F. SEXUALLY VIOLENT PREDATORS (WI 6600 - 6609.3)

1. Qualifying Criteria

- a. Definition - A “sexually violent predator” is a person who has been convicted of a sexually violent offense against two or more victims for which he or she received a determinate sentence and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he/she will engage in sexually violent criminal behavior.
- b. Crime was committed by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another.
- c. Sexual Offenses that Constitute Sexually Violent Behavior:
 - 1) PC 261(a)(2) - Rape with force, etc.
 - 2) PC 262(a)(1) - Rape of Spouse with force, etc.
 - 3) PC 264.1 - Acting in concert to commit rape with force, etc.
 - 4) PC 288(a) - Lewd and lascivious acts on a minor
 - 5) PC 288(b)(1) - Lewd and lascivious acts on a minor with force, etc.
 - 6) PC 288(b)(2) - Lewd and lascivious acts with force, etc., on a dependent adult by a caretaker
 - 7) PC 289 (a) - Penetration of a foreign object
 - 8) PC 286 - Sodomy
 - 9) PC 288a - Oral Copulation
- d. Other Qualifying Criteria
 - 1) Prior finding of not guilty by reason of insanity for an offense listed above.
 - 2) A conviction before July 1, 1977, for an offense listed above.
 - 3) A conviction that resulted in a finding the person is a mentally disordered sex offender.
 - 4) A conviction from another state that includes the elements listed above.

2. Preliminary Evaluation - Before Filing with the Court

- a. Director of Corrections makes a determination that a person currently incarcerated may be a sexually violent predator at least 6 months prior to his/her scheduled release date.
- b. Person is screened by Department of Corrections and Board of Prison Terms based on the following:
 - 1) Offense person was committed on is a sexually violent offense
 - 2) Review of person's social, criminal, and institutional history
- c. Person will be referred to State Departmental of Mental Health for full evaluation if found to be a likely sexually violent predator.
- d. Full evaluation will include the following:
 - 1) Assessment of diagnosable mental disorders
 - 2) Risk factors of repeat sex offenders including:
 - a) Criminal and psychological history
 - b) Type, degree, and duration of sexual deviation
 - c) Severity of mental disorder
- e. Person shall remain in custody no more than 45 days for full evaluation unless release date is more than 45 days from the date of referral.
- f. Evaluation shall be done by 2 psychiatrists, 2 psychologists, or 1 psychiatrist and 1 psychologist.
 - 1) Both doctors must concur the person has a diagnosable mental disorder so that the person is likely to engage in acts of sexual violence without appropriate treatment and custody.
 - 2) Director of Mental Health shall request a petition for commitment pursuant to WI 6602 if both doctors concur.
 - 3) Director of Mental Health shall arrange for further examination if both doctors do not concur.

- g. Further examination shall be done by 2 independent professionals.
 - 1) Both doctors must concur that the person meets criteria for commitment.
 - 2) The doctors must advise the person that the evaluation is not for treatment but to determine if the person meets the criteria for an involuntary commitment.
- h. Director of Mental Health has a determination that the person meets the criteria of a sexually violent predator.
 - 1) Request for Petition for Commitment is made.
 - 2) Request is sent to the District Attorney (or prosecutor) in the county that convicted the person.
- i. Prosecution must make a determination that a petition for commitment shall be filed.
 - 1) Counsel must notify the State Department of Mental Health of decision.
 - 2) Notice must be made within 15 days of the decision.

3. Processing the Petition for Commitment

- a. District Attorney's Office files a petition for commitment if they concur with the recommendation of the State Department of Mental Health.
- b. A judge reviews the petition and determines whether there is probable cause to believe that the individual is likely to engage in sexually violent predatory criminal behavior upon release.
 - 1) If no probable cause exists, the person is released on parole.
 - 2) If the court finds that there is probable cause, he/she shall order the person to remain in custody until a trial is held.
 - 3) Court shall notify State Department of Mental Health of the outcome of the probable cause hearing by sending a copy of the minute order within 15 days of the decision.

4. Urgency Review (WI 6601.5)

- a. District Attorney may request the court to review the petition on an urgency basis if the inmate is to be released from the Department of Corrections soon.
- b. The court shall review the petition to determine whether the petition states sufficient facts to believe the person is likely to engage in sexually violent behavior.
- c. If the court finds probable cause, the court shall order the person be detained in a secure facility until a hearing under WI 6602 can be held.
- d. The W&I 6602 hearing shall be held within 10 calendar days of the date of the order issued by the court.

5. Trial

- a. The person is entitled to trial, assistance of counsel (court appointed if necessary), appointment of experts and/or professionals and access to all relevant medical reports.
- b. Petitioning attorney or the defendant is entitled to demand a trial by jury. If no demand is made, the trial shall be by the court.
- c. The court or jury must determine whether, beyond a reasonable doubt, the person is a sexually violent predator. A unanimous decision is required in a jury trial.
- d. If the person is found **not** to be a sexually violent predator, they will be released (on parole).
 - 1) At the conclusion of the term for which they were originally sentenced;
 - 2) At the end of parole, whichever is applicable.
- e. If the defendant is found **to be** a sexually violent predator, they will be committed for two years to the State Department of Mental Health for appropriate treatment and confinement in a secure facility.
- f. Copy of trial decision minute order must be sent to Department of Mental Health within 72 hours.

6. Time of Commitment

- a. Commitment shall commence on the date the court issues the initial order of commitment.
- b. Commitment time will not be reduced by any time spent in a secure facility prior to the order of commitment.
- c. Subsequent commitments shall commence from the date of termination of the previous commitment.

7. Post Commitment Matters (WI 6605)

- a. State Department of Mental Health shall evaluate a person committed as a sexually violent predator at least once a year.
- b. Written notice of the person's right to petition the court for conditional release under WI 6608 shall be given to the person annually. The notice will contain a waiver of rights.
- c. Director shall forward an annual report to the court with the written notice and waiver of rights.
- d. If committed person does not affirmatively waive rights, the court shall:
 - 1) Set a hearing to determine if cause exists to warrant a hearing on changes in the person's condition.
 - 2) Person has a right to be present and have counsel represent him at the hearing.
- e. Outcome of the hearing for cause:
 - 1) Court finds probable cause exists that committed person's mental disorders have changed, that person is no longer a danger to the health and safety of others if discharged.
 - 2) A hearing on the issue will be set.
- f. Subsequent hearing:
 - 1) Committed person has a right to be present.
 - 2) Committed person has a right to the same constitutional protection given at the first hearing.
 - 3) The state is represented by the same attorney designated in the earlier proceedings and has the right to demand a jury.
 - 4) Committed person has the right to demand jury and have experts evaluate him on his behalf. Court shall appoint experts if the person is indigent and requests the appointment.

- 5) The state has the burden of proof to show beyond a reasonable doubt the committed person's mental disorder remains such that he is a danger to the health and safety of others if discharged.
 - a) If the court or jury rules against the committed person, the term of commitment shall run for a period of two years from the date of the ruling.
 - b) If the court or jury rules in favor of the committed person, he shall be unconditionally released and unconditionally discharged.
- g. If the State Department of Mental Health has reason to believe that committed person is no longer a sexually violent predator:
 - 1) They shall seek judicial review of the commitment pursuant to Section W&I 7250 in the superior court that made the commitment.
 - 2) If the court determines the person is no longer a sexually violent predator, the person shall be unconditionally released and unconditionally discharged.

8. DMH Recommends Conditional Release (WI 6607)

- a. Director of Mental Health determines the person's mental disorder has changed, that the person is not likely to commit acts of sexual violence while under supervision and treatment in the community.
- b. A report and recommendation for conditional release is sent to the county's designated attorney, the attorney of record for the committed person, and the committing court.
- c. The court shall set a conditional release hearing pursuant to WI 6608.

9. Inmate's Petition for Conditional Release (WI 6608)

- a. Committed person can petition the court for a conditional release without a recommendation or concurrence of the Director of Mental Health.
- b. Person is entitled to the assistance of counsel in making the request.
- c. If the request is denied either on court review of the petition or as the result of a hearing, and the court makes a determination the petition was frivolous, the court shall deny subsequent petitions by the person unless it contains facts the court could find that a hearing is warranted.
- d. The court shall review the petition and determine if it is based on the frivolous grounds and deny the petition without a hearing.

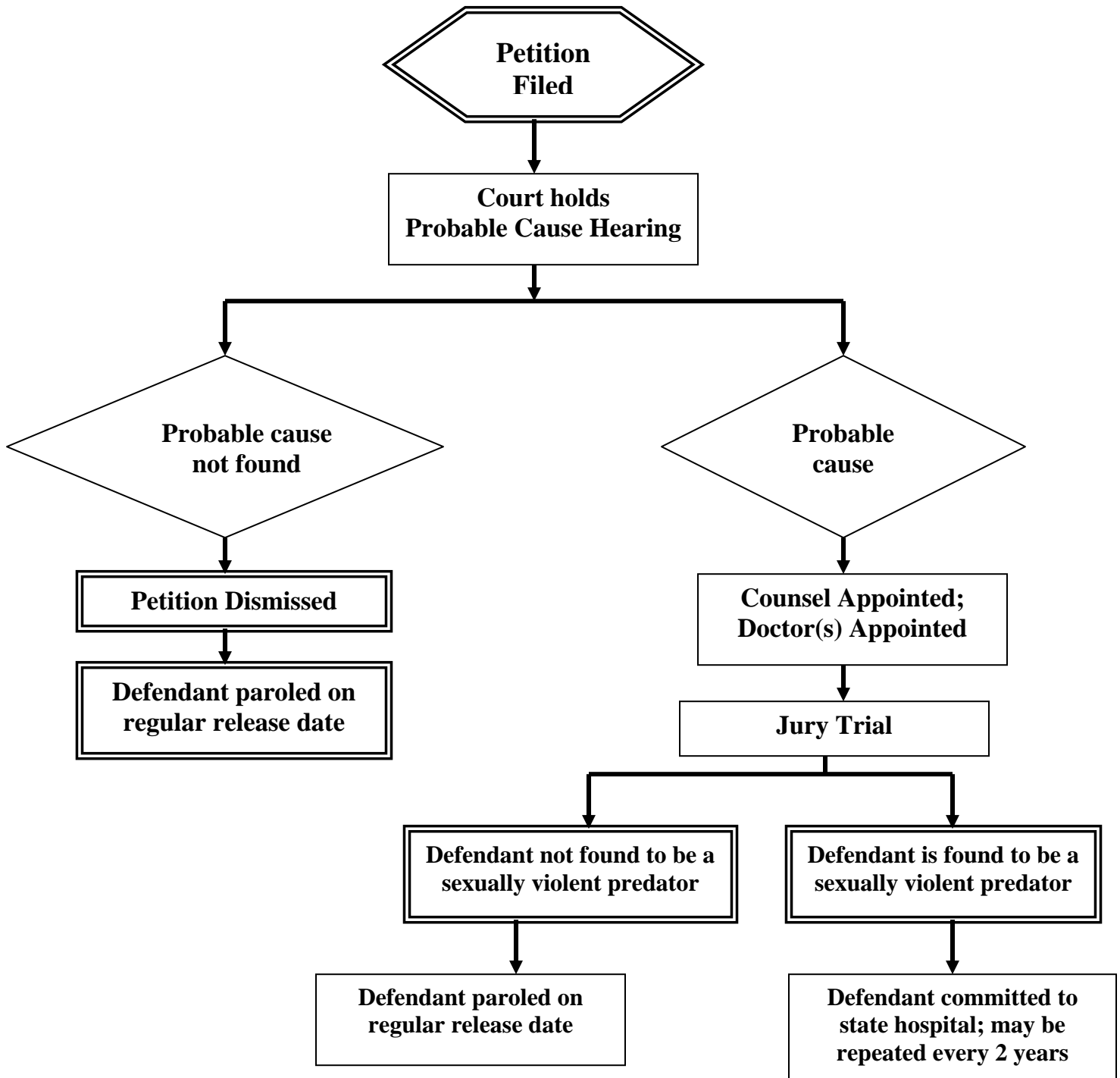
10. Conditional Release Hearing (WI 6608)

- a. The court shall give 15 days notice of the hearing to the following:
 - 1) District Attorney or county counsel
 - 2) Attorney of record for the committed person
 - 3) Director of Mental Health
- b. A conditional release hearing cannot be held until the person has been committed for at least one year from the date of the order of commitment.
- c. Purpose of the hearing is to determine if the person would be a danger to the health and safety of others by engaging in sexually violent criminal behavior if under supervision and treatment in the community.
 - 1) If the court finds the person is not a danger while under supervision, the person shall be placed with a forensic conditional release program operated by the state for one year.
 - 2) The court shall retain jurisdiction of the person throughout the course of the program.
- d. The community health director shall submit a written recommendation to the court.
 - 1) The recommendation shall specify which forensic conditional release program is appropriate for the person.
 - 2) If the court accepts the recommendation, the community health director shall make the necessary placement arrangements.
 - 3) Community health director shall place the person in the community within 21 days of receiving the court's finding.
 - 4) If the court does not accept the recommendation, the court shall specify the reasons on the record.
- e. A review hearing will be held after one year to determine if the person should be unconditionally released from commitment.
 - 1) The court shall make this determination when the person has completed at least one year in the conditional release program.
 - 2) Director of Mental Health shall be notified by the court of the hearing date.

11. Notice to Law Enforcement Officials (WI 6609.1)

- a. Person ordered released by the court (WI 6609.1(c))
 - 1) Court shall notify the Department of Corrections Sexually Violent Predator Parole Coordinator.
 - 2) Parole Coordinator shall notify:
 - a) State Department of Mental Health.
 - b) If the court/jury rules in favor of the committed person, he shall be unconditionally released and discharged.
 - c) The sheriff, chief of police, or other such official of the community where the person is to be released.
- b. The court shall give notice regardless whether the person will be serving a term of parole after release.
 - 1) Person shall remain in custody for a period not to exceed 72 hours or until parole arrangements have been made, whichever is sooner. (PC 6609.1(d))
 - 2) Notice of pending release shall be made by telephone or fax.
 - 3) Notice shall be made as soon as possible in to allow Department of Corrections to complete parole arrangements.

SEXUALLY VIOLENT PREDATORS OVERVIEW



IX. OFFICE PRACTICES

A. CERTIFICATE OF IDENTITY THEFT (PC 530.6)

1. A person who has learned that another has unlawfully used his or her personal identifying information may initiate an investigation through local law enforcement.

Law enforcement shall make a report, provide the victim with a copy of that report and begin an investigation.

2. A person who believes that he/she is a victim of identity theft, may petition the court for an expedited judicial determination of his or her *factual innocence*.
 - a. If the perpetrator of the identity theft was arrested for or convicted of a crime under the victims' identity.
 - b. Where the victim's identity has been mistakenly associated with a record of criminal conviction.
3. A judicial determination of factual innocence made pursuant to this section may be heard and determined upon declarations, affidavits, police reports or other material, which is relevant and reliable.
4. If the court determines that the petition is meritorious with no reasonable cause to believe that the petitioner committed the offense for which the perpetrator of the identity theft was arrested or convicted, the court shall find the petitioner factually innocent of that offense.

The court shall issue an order certifying this determination, which may be vacated at any time if information is provided that there was fraud or misrepresentation.

5. Victims shall submit the court order to the California Department of Justice to be included in a database established by them.
 - a. The victim shall also submit a full set of fingerprints and any other information requested by the department.
 - b. Upon receiving the information, the Department of Justice shall verify the identity of the victim against any driver's license or other identification record maintained by the Department of Motor Vehicles.
 - c. The Department of Justice shall establish and maintain a database of individuals who have been victims of identity theft and shall provide victims access to the database in order to establish that the individual has been a victim of identity theft.

- d. The Department of Justice shall establish a toll-free telephone number to provide access to said information.
- 6. Any form CR-150 (Certificate of Identity Theft: Judicial Determination of Factual Innocence that is filed with the court is confidential.
 - a. The clerk's office must maintain these forms in a manner that will protect and preserved their confidentiality. (CRC 4.601)
 - b. The court, victim, prosecutor and law enforcement shall have access to the form. The court may allow access to any other person on a showing of good cause.

CONFIDENTIAL (SEE RULE 4.601)		CR-150
<div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): <div style="display: flex; justify-content: space-between;"><div>TELEPHONE NO. (Optional):</div><div>FAX NO. (Optional):</div></div><div>E-MAIL ADDRESS (Optional):</div><div>ATTORNEY FOR (Name):</div></div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px; text-align: center;">PEOPLE OF THE STATE OF CALIFORNIA VS. DEFENDANT:</div> <div style="border: 1px solid black; padding: 5px; text-align: center;">CERTIFICATE OF IDENTITY THEFT: JUDICIAL FINDING OF FACTUAL INNOCENCE (Penal Code § 530.6)</div>	<div style="border: 1px solid black; padding: 5px; margin-bottom: 5px; text-align: center;">FOR COURT USE ONLY</div> <div style="border: 1px solid black; padding: 5px;">CASE NUMBERS:</div>	

Warrant No. (if any): _____	Violation Date: _____
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1. Petitioner Information:
- Name: _____ Date of Birth: _____
- Sex: ☐ M ☐ F Ht.: _____ Wt.: _____ Hair Color: _____ Eye Color: _____ Race: _____ Age: _____
- Booking No.: _____ Driver's License or Identification No.: _____
- Other Identifying Information: _____

2. The court finds that:
- ☐ Another person was arrested for or convicted of a crime under the identity of the petitioner in this case.
- ☐ The petitioner's identity has been mistakenly associated with a record of the criminal conviction in this case.
- ☐ The petitioner is not the person for whom the warrant in this case was issued.
- Accordingly, the court finds that the petition is meritorious and that there is no reasonable cause to believe that the petitioner committed the offense in this case, and that the petitioner is factually innocent of that offense.**

Date: _____ JUDICIAL OFFICER _____

CERTIFICATION	
<div style="border: 1px solid black; height: 100px; margin-bottom: 10px; text-align: center; line-height: 100px;">(SEAL)</div> <div style="border: 1px solid black; padding: 5px;">I certify that this document is a correct copy of the original on file in my office.</div> <div style="border: 1px solid black; padding: 5px;">Date: _____</div> <div style="border: 1px solid black; padding: 5px;">Clerk, by _____</div> <div style="text-align: center; margin-top: 10px;">(DEPUTY)</div>	<div style="border: 1px solid black; padding: 5px; margin-bottom: 10px;">1. The box to the right contains the petitioner's <input type="checkbox"/> right thumbprint <input type="checkbox"/> other print (specify): _____</div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 10px;">2. The print was taken on (date): _____</div> <div style="border: 1px solid black; padding: 5px;">3. The print was taken by a. Name: _____ b. Position: _____ c. Badge or serial No.: _____</div> <div style="border: 1px solid black; width: 100px; height: 100px; margin-left: auto; margin-top: 20px;"></div>

ANY ALTERATION RENDERS THIS FORM VOID.

- B. COMPUTING TIME FOR COURT DAYS** - Computing time accurately is one of the most important duties in our environment. Time is computed for various reasons: setting court proceedings, determining a defendant's jail time, etc. The following are some of the laws that govern this process.
1. Code of Civil Procedure section 12. The time in which any act provided by law is to be done is computed by excluding the first day, and including the last, unless the last day is a holiday, and then it is also excluded.
 2. Code of Civil Procedure section 12a. (a) If the last day for the performance of any act provided or required by law to be performed within a specified period of time is a holiday, then that period is hereby extended to and including the next day which is not a holiday. For purposes of this section, "holiday" means all day on Saturdays, all holidays specified in Section 135 and, to the extent provided in Section 12b, all days which by terms of Section 12b are required to be considered as holidays. (b) This section applies also to Sections 659, 659a, 946, and 974 to 982, inclusive, and the periods of time severally therein prescribed or provided for, and to all other provisions of law, however stated or wherever expressed, providing or requiring an act to be performed on a particular day or within a specified period of time. The mention of these sections is not intended and shall not be construed to exclude the application of this section to any other provisions of law, whether the latter are expressed in this or any other code or statute, ordinance, rule, or regulation.
 3. Code of Civil Procedure section 12b. If any city, county, state, or public office, other than a branch office, is closed for the whole of any day, insofar as the business of that office is concerned, that day shall be considered as a holiday for the purposes of computing time under Sections 12 and 12a.
 4. Code of Civil Procedure section 13. Whenever any act of a secular nature, other than a work of necessity or mercy, is appointed by law or contract to be performed upon a particular day, which day falls upon a holiday, such act may be performed upon the next business day with the same effect as if it had been performed upon the day appointed.
 5. Code of Civil Procedure section 13a. Any act required by law to be performed on a particular day or within a specified period of time may be performed (but is not hereby required to be performed) on a special holiday as that term is used in Section 6705 of the Government Code, with like effect as if performed on a day which is not a holiday.
 6. Code of Civil Procedure section 13b. Any act required by law to be performed on a particular day or within a specified period may be performed (but is not hereby required to be performed) on a Saturday, with like effect as if performed on a day which is not a holiday.

C. CONFIDENTIAL DOCUMENTS GUIDELINES

AIDS Test Results Medical Reports

Penal Code section 1202.1; Government Code section 6254(c).

CII (Criminal Identification and Information) and Rap Sheets

Government Code sections 6254(f); 6255; Penal Code sections 11076; 11105; 13300.

Criminal Grand Jury Proceedings

Penal Code 924.

All proceedings confidential until defendant is arrested.

DMV (Department of Motor Vehicle) Printouts

Vehicle Code sections 1808.5; 1808.21(d); 1808.7; 1808.21(a); 4750.2(a); 1653.5.

Financial Records -Defendant's Statement of Assets

Government Code sections 6254(d), (h), (i), (k), (n), (o), (x); 6254.5(o)-(h); Penal Code section 1202.4. Statement of Assets available to victim when restitution ordered.

Funds for Indigent Defendants for Defense of Capital Cases

Penal Code section 987.9.

Grand Jury Transcript

Penal Code section 938.1(b).

Accessible 10 days after delivery to attorneys unless ordered sealed.

Jury Questionnaires

Code of Civil Procedure section 237.

All seated jurors and all lists.

Letters to Judge from victims or defendant's family/friends regarding defendant's character

Letters considered at time of sentencing should be sealed with Probation Officer's Report.

Probation Officer's Report

Penal Code section 1203.05; Government Code section 6254(f), 6255

Open to public for 60 days after sentencing. After 60 days open only to District Attorney or any person authorized or by Court order.

Search Warrants

Government Code sections 6254(d), (h), (i), (k), (n), (o), (x), 6254.5 (o) through (h); Penal Code sections 987(c); 1534(a).

Open to public 10 days after filing or upon filing of the Return unless ordered sealed.

Confidential information and records; disclosure; consent

Welfare and Institutions Code section 5328.

Documents that are marked with this code are deemed to be confidential.

D. COURTROOM CLERK RESPONSIBILITIES – Courtroom Clerks perform a variety of duties: prepare minutes of proceedings, receive and mark evidence, gather and maintain court records, prepare court calendars and process legal documents.

1. Government Code section 69841. The clerk of the superior court shall attend each session of the superior court in his county and upon the judge or judges of the court in chambers when required.
2. Government Code section 69842. The clerk of the superior court shall keep such indexes as will insure ready reference to any action or proceeding filed in the court. There shall be separate indexes of plaintiffs and defendants in civil actions and of defendants in criminal actions. The name of each plaintiff and defendant shall be indexed and there shall appear opposite each name indexed the number of the action or proceeding and the name or names of the adverse litigant or litigants.
3. Government Code section 69843. The clerk of the superior court shall issue all process and notices required to be issued.
4. Government Code section 69844. The clerk of the superior court shall keep the minutes and other records of the court, entering at length within the time specified by law, or forthwith if no time is specified, any order, judgment, and decree of the court which is required to be entered and showing the date when each entry is made. Failure so to enter the date or failure to enter the order, judgment, or decree within the time specified in this section shall not affect the validity or effectiveness of the entry.
5. Government Code section 69844.5. On and after July 1, 1997, each clerk of the superior court shall prospectively certify and submit those court records specified by the Judicial Council which relate to criminal convictions for entry into a computer system operated by the Department of Justice that can be accessed by authorized agents of any district attorney or other state prosecuting agency. This section shall not be construed to require a superior court to acquire any new equipment or to implement any new procedures.
6. Government Code section 69844.7. Notwithstanding any provisions of law to the contrary, in those counties where it is required by court order or rule that the clerk of the superior court place individual minute orders in the court's file of actions in chronological order, and if it is otherwise required by law that as a prerequisite to destruction of such records a microfilm copy thereof be made, the clerk shall not be required to keep a minute book but shall be required to keep minutes. Nothing contained herein shall eliminate the requirement for a judgment book where judgments and decrees are required to be entered.
7. Black's Law Dictionary: Minute order - a memorandum of what takes place in court, made by authority of the court.
8. Meskeil v. Culver City Unified School District (1970) 12 Cal.App.3rd 815, 821. Minutes constitute the only official records of the actions of the court

9. 12 California Jurisprudence, Third Edition, section 16. Time and dating of entry. The clerk must enter minutes and other records of the court within the time prescribed by law, or forthwith if no time is prescribed, and must show the date when the entry was made. However, his failure to make the entry within the time specified, or to date the entry, will not affect the validity or effectiveness of the entry. (Deering's Government Code section 69844 (superior court), 72050.5 (municipal court), 71614.5 (justice court).) By nature of his office, the clerk of the superior court is required to follow the lawful orders of the court with respect to the time of making entries. (Desherow v Rhodes, 1 CA3d 733,82 Cal Rptr 138.) But the failure of a deputy clerk to stamp an order with the clerk's entry stamp on a particular date, as he was instructed to do by the judge, does not nullify the timely entry of the order in the permanent minutes of the court. (Desherow v Rhodes, 1 CA3d 733,82 Cal Rptr 138.)

- E. **FACSIMILE FILING AND ELECTRONIC FILING** – Fax filings can be accepted except those specified in the California Rules of Court, Rule 2002.
 1. California Rules of Court, Rule 2002. Applicability. These rules apply to civil, probate, and family law proceedings in all trial courts. Rule 1406.5 applies to fax filing in juvenile law proceedings. Notwithstanding any provision in these rules, no will, codicil, bond, or undertaking shall be filed by fax nor shall a court issue by fax any document intended to carry the original seal of the court.

- F. **THE FACSIMILE STAMP** – A facsimile stamp bears the handwritten signature of an individual, such as a judge. It can be used as a substitute for the actual handwritten signature but when used, the clerk must initial his/her initials next to it.
 1. Government Code 69848. The clerk of the superior court may use a facsimile signature on any court documents regularly maintained in the ordinary course of business for the purpose of filing or certifying those documents, provided the authorized deputy initials the facsimile signature.

G. FEES

1. Government Code section 26857. Enumeration of instances not subject to fees. No fee shall be charged by the clerk for service rendered in any criminal action or, except as otherwise provided in Section 10619 of the Health and Safety Code, in any adoption proceeding, nor shall any fees be charged for any service to the state. No fee shall be charged by the clerk for service rendered in any juvenile proceeding or proceeding to declare a minor free from parental custody or control. No fee shall be charged by the clerk for service rendered to any municipality or county in the state, or to the national government, nor for any service relating thereto.
2. Penal Code section 1203.4(c). A person who petitions for a change of plea or setting aside of a verdict under this section may be required to reimburse the county for the actual cost of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the county board of supervisors not to exceed one hundred twenty dollars (\$120), etc .

H. FILE STAMPING – File stamping a document is one of the most common tasks performed by a clerk. Clerks are responsible for the documents that they file. Some have had to testify in court regarding documents that they have file stamped. Therefore, when file stamping, one must know:

1. The type of document.
2. The fees, if any, to be charged for its filing.
3. The computer input that is required.
4. Where the documents should be forwarded (to the file, court).
5. Some documents are file stamped and others are marked “Received.” This depends on the subject matter. In criminal matters, subpoenaed records are not file stamped, they are marked “Received.” (Evidence Code section 1560.)
6. Documents should be file stamped on the top right hand corner of the first page of the document. If there is no space in the top right hand corner, the file stamp should be placed on the first page where there is space. When one file stamps, one should avoid obliterating the writings in the document. The file stamp pad should always be well inked with purple or black ink.
7. Government Code section 69846.5. The clerk of the superior court shall endorse on each paper filed with the court the day, month, and year it is filed.

I. PAPER FORMAT – Documents, pleadings are on white paper.

1. California Rules of Court, Rule 201. Form of Papers Presented for Filing.

- a. [Definitions] As used in this rule,
 - 1) The word “papers” includes all documents, except exhibits or copies of documents, which are offered for filing in any case in the superior courts; but it does not include printed forms furnished by the clerks of the courts other than as provided in subdivision (j), records on appeal from municipal courts in civil cases, or briefs filed in the appellate departments.
 - a.) The word “recycled” as applied to paper means “recycled paper product” as defined by section 42202 of the Public Resources Code.
- b. [Use of Recycled Paper; Certification by Attorney or Party] The use of recycled paper is required for the following:
 - 1) All original papers filed with the court and all copies of papers, documents, and exhibits, whether filed with the court or served on other parties;
 - 2) All original forms, whether state or local, filed with the court, and all copies of such forms, whether filed with the court or served on other parties;
 - 3) The original record on appeal from a limited civil case, any brief filed with the court in a matter to be heard in the appellate division, and all copies of such documents, whether filed with the court or served on other parties.
- c. Whenever the use of recycled paper is required by these rules, the attorney, party or other person filing or serving a document certifies, by the act of filing or service, that the document was produced on paper purchased as recycled.
- d. [Size of Paper, Pagination, Etc. and Type Style] All papers shall be typewritten or printed, or be prepared by a photocopying or other duplication process that will produce clear and permanent copies equally legible to printing, in type not smaller than 12 points, on opaque, unglazed paper, white or unbleached, of standard quality not less than 20-pound weight, 8 ½ x 11 inches in size. The typeface shall be essentially equivalent to Courier, Times, or Helvetica. The color of print shall be blue-black or black.
- e. [Line Spacing and Numbering] Only one side of the paper shall be used, and the lines on each page shall be one and one-half spaced or double spaced and numbered consecutively; but descriptions of real property may be singled spaced and footnotes, quotations, and printed forms of corporate surety bonds and undertakings may be singled spaced and have

unnumbered lines if they comply generally with the space requirements of subdivision (f). The left margin shall be at least one inch from the left edge of the paper and the right margin at least one-half inch from the right edge of the paper. Line numbers shall be placed at the left margin and separated from the text of the paper by a vertical column of space at least one-fifth inch wide or a single or double vertical line. The line number either shall be placed on the same line as a line of type or shall be evenly spaced vertically on the page. Line numbers shall be consecutively numbered beginning with the number 1 on each page. There shall be at least three line numbers for every vertical inch on the page.

- f. [Page Numbering and Hole Punching] Each page shall be numbered consecutively at the bottom. Each paper shall consist entirely of original pages without riders, and shall be firmly bound together at the top. Exhibits may be fastened to pages of the specified size and, when prepared by a machine copying process, shall be equal to typewritten material in legibility and permanency of image. Each paper presented for filing shall contain two pre-punched normal size holes, centered 2 ½ inches apart, and 5/8 inch from the top of the paper.

J. RECORDS RETENTION – The Court is required to retain records/files. This is a partial list regarding that requirement.

1. Government Code section 68150. (a) Trial court records may be preserved in any form of communication or representation, including optical, electronic, magnetic, micrographic, or photographic media or other technology capable of accurately producing or reproducing the original record according to minimum standards or guidelines for the preservation and reproduction of the medium adopted by the American National Standards Institute or the Association for Information and Image Management. Specifications for electronic recordings made as the official record of the oral proceedings shall be governed by the California Rules of Court. (b) No additions, deletions, or changes shall be made to the content of the record. The records shall be indexed for convenient access. (c) A copy of the record preserved or reproduced according to subdivisions (a) and (b) shall be deemed the original court record and may be certified as a correct copy of the original record. (d) A court record preserved or reproduced in accordance with subdivisions (a) and (b) shall be stored in a manner and in a place that reasonably assures its preservation against loss, theft, defacement, or destruction for the prescribed retention period under Section 68152. Electronic recordings made as the official record of the oral proceedings shall not require a backup copy unless otherwise specified in the California Rules of Court. (e) The court record that was reproduced in accordance with subdivisions (a) and (b) may be disposed of in accordance with the procedure under Section 68153, unless it is subject to subdivision (f). (f) The following court records may be preserved or reproduced under subdivisions (a) and (b) but shall also be preserved on paper, microfilm, or in another form of communication or representation approved by and in accordance with standards that are defined as archival by the American National Standards Institute for the duration of the record's retention period: (1) The comprehensive historical and sample superior court records preserved for research under the California Rules of Court. (2) Court records that are preserved permanently. Court records that must be preserved longer than 10 years but not permanently may be reproduced on media other than paper or microfilm using technology authorized under subdivisions (a) and (b). However the records shall be reproduced before the expiration of their estimated lifespan for the medium in which they are stored as specified in subdivision (g). (g) Instructions for access to data stored on a medium other than paper shall be documented. Each court shall conduct a periodic review of the media in which the court records are stored to assure that the storage medium is not obsolete and that current technology is capable of accessing and reproducing the records. The court shall reproduce records before the expiration of their estimated lifespan for the medium in which they are stored according to minimum standards and guidelines for the preservation and reproduction of the medium adopted by the American National Standards Institute or the Association for Information and Image Management. (h) Court records preserved or reproduced under subdivisions (a) and (b) shall be made reasonably accessible to all members of the public for viewing and duplication as would the paper records. Reasonable provision shall be made for duplicating the records at cost. Cost shall consist of all costs associated with duplicating the records as determined by the court.

2. Government Code section 68151. The following definitions apply to this chapter:
(a) "Court record" shall consist of the following: (1) All filed papers and documents in the case folder; but if no case folder is created by the court, all filed papers and documents that would have been in the case folder if one had been created. (2) Administrative records filed in an action or proceeding, depositions, paper exhibits, transcripts, including preliminary hearing transcripts, and tapes of electronically recorded proceedings filed, lodged, or maintained in connection with the case, unless disposed of earlier in the case pursuant to law. (3) Other records listed under subdivision (j) of Section 68152. (b) "Notice of destruction and no transfer" means that the clerk has given notice of destruction of the superior court records open to public inspection, and that there is no request and order for transfer of the records as provided in the California Rules of Court. (c) "Final disposition of the case" means that an acquittal, dismissal, or order of judgment has been entered in the case or proceeding, the judgment has become final, and no postjudgment motions or appeals are pending in the case or for the reviewing court upon the mailing of notice of the issuance of the remittitur. In a criminal prosecution, the order of judgment shall mean imposition of sentence, entry of an appealable order (including, but not limited to, an order granting probation, commitment of a defendant for insanity, or commitment of a defendant as a narcotics addict appealable under Section 1237 of the Penal Code), or forfeiture of bail without issuance of a bench warrant or calendaring of other proceedings. (d) "Retain permanently" means that the original court records shall never be transferred or destroyed.
3. Government Code section 68152. The trial court clerk may destroy court records under Section 68153 after notice of destruction and if there is no request and order for transfer of the records, except the comprehensive historical and sample superior court records preserved for research under the California Rules of Court, when the following times have expired after final disposition of the case in the categories listed
 - a. (a) Adoption: retain permanently. (b) Change of name: retain permanently. (c) Criminal. (1) Capital felony (murder with special circumstances where the prosecution seeks the death penalty): retain permanently. If the charge is disposed of by acquittal or a sentence less than death, the case shall be reclassified. (2) Felony, except as otherwise specified: 75 years. (3) Felony, except capital felony, with court records from the initial complaint through the preliminary hearing or plea and for which the case file does not include final sentencing or other final disposition of the case because the case was bound over to the superior court: five years. (4) Misdemeanor, except as otherwise specified: five years. (5) Misdemeanor alleging a violation of the Vehicle Code, except as otherwise specified: three years. (6) Misdemeanor alleging a violation of Section 23103, 23152, or 23153 of the Vehicle Code: seven years. (7) Misdemeanor alleging a violation of Section 14601, 14601.1, 20002, 23104, or 23109 of the Vehicle Code: five years. (8) Misdemeanor alleging a marijuana violation under subdivision (b), (c), (d), or (e) of Section 11357 of the Health and Safety Code, or subdivision (b) of Section

11360 of the Health and Safety Code in accordance with the procedure set forth in Section 11361.5 of the Health and Safety Code: records shall be destroyed two years from the date of conviction or from the date of arrest if no conviction. (9) Misdemeanor, infraction, or civil action alleging a violation of the regulation and licensing of dogs under Sections 30951 to 30956, inclusive, of the Food and Agricultural Code or violation of any other local ordinance: three years. (10) Infraction, except as otherwise specified: three years. (11) Parking infractions, including alleged violations under the stopping, standing, and parking provisions set forth in Chapter 9 (commencing with Section 22500) of Division 11 of the Vehicle Code: two years. (f) Habeas corpus: same period as period for retention of the records in the underlying case category.

4. Government Code section 68153. Upon order of the presiding judge of the court, court records open to public inspection and not ordered transferred under the procedures in the California Rules of Court, confidential records, and sealed records that are ready for destruction under Section 68152 may be destroyed. Destruction shall be by shredding, burial, burning, erasure, obliteration, recycling, or other method approved by the court, except confidential and sealed records, which shall not be buried or recycled unless the text of the records is first obliterated. Notation of the date of destruction shall be made on the index of cases or on a separate destruction index. A list of the court records destroyed within the jurisdiction of the superior court shall be provided to the Judicial Council in accordance with the California Rules of Court.
5. Government Code section 69846. The clerk of the superior court shall safely keep or dispose of according to law all papers and records filed or deposited in any action or proceeding before the court

- K. REGISTERED – CERTIFIED MAIL** – The process of sending documents to a party and the party acknowledges receipt by signing the certificate.

Code of Civil Procedure section 11. Wherever any notice or other communication is required by this code to be mailed by registered mail by or to any person or corporation, the mailing of such notice or other communication by certified mail shall be deemed to be a sufficient compliance with the requirements of law.

L. RECORDS DESTROYED IN FIRE OR CALAMITY

Code of Civil Procedure section 1953.01. Petition to Restore by Certified Copy. Whenever in any action or special proceeding, civil or criminal, in any court of this State any record is lost, injured, or destroyed by reason for conflagration or other public calamity, any person interested therein may apply by a duly verified petition in writing to the court for an order authorizing such defect to be supplied by a duly certified copy of the original where such copy can be obtained.

M. REQUESTS FOR MEDIA COVERAGE CRC 980

1. Photographing, recording and broadcasting of courtroom proceedings may be permitted as described in Rule 980 if executed in a manner that ensures that the fairness and dignity of the proceedings are not adversely affected.
2. Definitions (CRC 980(b))
 - a. “Media” coverage means any photographing, recording or broadcasting of court proceedings by the media using television, radio, photographic or recording equipment;
 - b. “Media” or “media agency” means any person or organization engaging in news gathering or reporting and includes any newspaper, radio or television station or network, news service, magazine, trade paper, in house publication, professional journal or other news reporting or news gathering agency;
 - c. “Court” means the courtroom, at issue, the courthouse and its entrances and exits.
 - d. “Judge,” means the judicial officer or officers assigned to or presiding at the proceedings, except as provided in subdivision (e)(1) if no judge has been assigned.
3. Except as provided in this rule, court proceedings shall not be photographed, recorded or broadcast.
4. This rule does not prohibit courts from photographing or videotaping sessions for judicial education or publications.

5. The judge may permit inconspicuous personal recoding devices to be used by persons in a courtroom to make sound recordings.
6. A person proposing to use a recording device shall obtain permission from the judge in advance.
7. The recording shall not be used for any purpose other than as personal notes.
8. Media coverage shall be permitted only on written order of the judge as provided in subdivision (e) of Rule 980.
9. The judge in his or her discretion may permit, refuse, limit or terminate media coverage.
10. This rule does not otherwise limit or restrict the right of the media to cover and report court proceedings.
11. Request For Order
 - a. The media may request an order permitting media coverage on a form approved the Judicial Council.
 - b. The form shall be filed at least five court days before the proceeding to be covered unless good cause is shown.
 - c. A completed, proposed order shall be filed with the Request.
 - d. The judge assigned to the proceeding shall rule upon the request.
 - e. If no judge has been assigned, the request shall be submitted to the judge supervising the calendar department and thereafter be ruled upon by the judge assigned to the proceeding.
 - f. The clerk shall promptly notify the parties that a request has been filed.
 - g. The judge may hold a hearing on the request or rule on the request without a hearing.
 - h. The judge shall consider the following factors in ruling on the request:
 - 1) The importance of maintaining public trust and confidence;
 - 2) The importance of promoting public access;
 - 3) The parties support of or opposition;
 - 4) The nature of the case;
 - 5) Privacy rights of all participants in the proceedings;

- 6) The effect on any minor who is a party, prospective witness, victim or other participant;
 - 7) The effect on the parties' ability to select a fair and unbiased jury;
 - 8) The effect on any ongoing law enforcement activity;
 - 9) The effect on any unsolved identification issues;
 - 10) The effect of coverage on the willingness of witnesses to cooperate;
 - 11) The effect on excluded witnesses who would have access to the televised testimony of a prior witness;
 - 12) The scope of the coverage and whether it might unfairly influence or distract the jury;
 - 13) The difficulty of jury selection if a mistrial is declared;
 - 14) The security and dignity of the court;
 - 15) Undue administrative or financial burden to the court;
 - 16) Interference with other courtrooms;
 - 17) Maintaining orderly conduct;
 - 18) Any other factor the judge deems relevant.
12. The judge ruling on the request to permit media coverage is not required to make findings or a statement of decision.
 13. The order may incorporate any local rule or order of the presiding or supervising judge regulating media activity outside of the courtroom.
 14. The judge may condition the order on the media agency's agreement to pay any increased court incurred costs resulting from the permitted media coverage.
 15. The order may be modified or terminated on the judge's own motion or upon application to the judge without the necessity of a prior hearing or written findings.

Notice of the application and any modification or termination ordered shall be given to the parties and each media agency permitted to cover the proceeding.
 16. The judge shall not permit media coverage of the following:
 - a. Proceedings held in chambers;
 - b. Proceedings closed to the public;

- c. Jury selection;
 - d. Jurors or spectators; and
 - e. Conferences between an attorney and a client, witness or aide, between attorneys or between counsel and the judge at the bench.
17. Unless the judge in his or her discretion order otherwise, the following rules shall apply:
- a. One television camera and one still photographer shall be permitted.
 - b. The equipment used shall not produce distracting sound or light. Signal lights or devices to show when equipment is operating shall not be visible.
 - c. An order permitting or modifying existing sound or lighting systems is deemed to require that the modifications be installed, maintained and removed without public expense or disruption of the proceedings. Microphones and wiring shall be unobtrusively located in places approved by the judge and shall be operated by one person.
 - d. Operators shall not move equipment or enter or leave the courtroom while the court is in session or otherwise cause a distraction.
 - e. Equipment or clothing shall not bear the insignia or marking of a media agency.
18. If two or more agencies of the same type request coverage they shall file a statement of agreed arrangements. If they unable to agree, the judge deny the coverage.

Insert Request Pg. 1 – Media Coverage

Insert Pg. 2 – request for media coverage

N. THE SEAL – The seal is an official impression placed on various documents.

1. Government Code section 68074. Each court shall have a seal.
2. Government Code section 68074.1. The seal of any superior or municipal court may be affixed by a seal press or stamp which will print or emboss a seal which will reproduce legibly under photographic methods.
3. Government Code section 68076. The seals of the superior courts shall: (a) Be circular. (b) Be not less than one and one-fourth inches in diameter. (c) Have in the center any word, words, or design adopted by the judges of the superior court. (d) Have inscribed around the central words or design "Superior Court _____, California," inserting the name of the county. The seal of any such court, which has been adopted before April 1, 1880 shall be the seal of such court until another is adopted.
4. Government Code section 68080. The clerk of the court shall keep the seal of the court.
5. Government Code section 68080.5. (a) A person who uses or allows to be used any reproduction or facsimile of the seal of the California Supreme Court, an appellate court, or a superior court in any campaign literature or mass mailing, as defined in Section 82041.5, with intent to deceive the voters, is guilty of a misdemeanor. (b) For purposes of this section, the use of a reproduction or facsimile of a seal in a manner that creates a misleading, erroneous, or false impression that the document is authorized by a public official is evidence of intent to deceive.
6. Code of Civil Procedure section 14. When the seal of a Court, public officer, or person is required by law to be affixed to any paper, the word "seal" includes an impression of such seal upon the paper alone as well as upon wax or a wafer affixed thereto.
7. Code of Civil Procedure section 153. Except as otherwise expressly provided by law, the seal of a court need not be affixed to any proceeding therein, or to any document, except to the following: (a) A writ. (b) A summons. (c) A warrant of arrest.
8. Code of Civil Procedure section 1930. A seal is a particular sign, made to attest, in the most formal manner, the execution of an instrument.

9. Code of Civil Procedure section 1931. Section Nineteen Hundred and Thirty-one. A public seal in this State is a stamp or impression made by a public officer with an instrument provided by law, to attest the execution of an official or public document, upon the paper, or upon any substance attached to the paper, which is capable of receiving a visible impression. A private seal may be made in the same manner by any instrument, or it may be made by the scroll of a pen, or by writing the word "seal" against the signature of the writer. A scroll or other sign, made in a sister State or foreign country, and there recognized as a seal, must be so regarded in this State.
10. Civil Code section 1193. Seal and Signature. Officers taking and certifying acknowledgments, or proof of instruments for record, must authenticate their certificates by affixing thereto their signatures, followed by the names of their offices; also, their seals of office, if by the laws of the state or country where the acknowledgment or proof is taken, or by authority of which they are acting, they are required to have official seals.
11. Penal Code section 1217. Death Sentence-Delivery of Warrant to Warden. When judgment of death is rendered, a commitment signed by the judge, and attested by the clerk under seal of the court must be drawn and delivered to the sheriff.

O. SUBPOENA DUCES TECUM

1. Code of Civil Procedure section 1987.3. Subpoena-Custodian of Records-Personal Attendance Not Required. When a subpoena duces tecum is served upon a custodian or other qualified witness as provided in Article 4 (commencing with Section 1560) of Chapter 2 of Division 11 of the Evidence Code, and his personal attendance is not required by the terms of the subpoena, attendance is not required by the terms of the subpoena, Section 1989 shall not apply.